United States Court of Appeals for the Second Circuit



APPENDIX

16 1436

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

JERRY WINSTON, BROOME COUNTY AVIATION, INC., COMMUTER AIRLINES, INC., and THEODORE (TED) BELL,

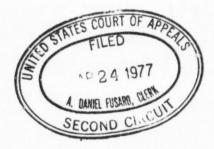
Defendants-Appellants.

Bys

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

APPENDIX - VOLUME 3

Pages 545 to 865



PAUL, WEISS, RIFKIND, WHARTON & GARRISON 345 Park Avenue
New York, New York 10022
Attorneys for Appellants

PAUL V. FRENCH
UNITED STATES ATTORNEY FOR THE
NORTHERN DISTRICT OF NEW YORK
United States Courthouse and Federal
Building
100 South Clinton Street
Syracuse, New York 13202
Attorney for Appellee

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT MORTHERN DISTRICT OF NEW YORK 3 -----X 1 UNITED STATES OF AMERICA. Plaintiff 6 - against -: CRIMINAL NO. 75 - CR - 83 JERRY WINSTON, BROOME COUNTY AVIATION, INC., COMMUTER AIRLINES, 8 INC., and THEODORE (TED) BELL, Defendants 10 11 12 13 CONTINUATION OF PROCEEDINGS in 11 above-entitled matter, came on before the United 15 States District Court, Northern District of New 16 York, at Auburn, New York, on Monday, June 7, 17 1976, at 10:00 a.m., before the Honorable Lloyd 18 F. MacMahon, United States District Judge. 19 VOLUME V 20 21

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APPEARANCES:

The Honorable JAMES M. SULLIVAN, JR.,
United States Attorney, Northern District of New York,
Federal Building, Syracuse, New York, by ARTHUR A.
CHALENSKI, ESQ., Assistant United States Attorney,
Of Counsel.

- and -

BECKER, CARD, LEVY & RICHARDS, P.C.,
141 Washington Avenue, Endicott, New York 13760,
Attorneys for Defendants Jerry Winston, Broome
County Aviation, Inc., and Commuter Airlines, Inc.,
by RODNEY A. RICHARDS, ESQ., Of Counsel.

- and -

FAUL R. SHANAHAN, ESQ., Syracuse, New York, Attorney for Defendant Theodore (Ted) Bell.

(Whereupon, the following took place before the Court, absent the Jury.) THE COURT: Good morning. The Clerk reports that one of the jurors, number nine, has an 1 appointment with a doctor at 3:30 this afternoon, which she is unable to change. What do Counsel wish to do regarding that? 8 MR. CHALENSKI: The Government has no objection to adjourning early to enable her to make 10 that appointment. 11 Nor : do we have an objection, if 12 Defense Counsel wants to have her discharged and use 13 an alternate juror. 14 THE COURT: The Court might not take too 15 kindly to dismissing a juror and using an alternate for 16 the sake of one hour. We only have two alternates, and I hate to get a mistrial in this case, and to have to 17 18 do it over again. 19 MR. SHANAHAN: My thought would be to accommodate this lady, whatever is necessary to do. 20 21 THE COURT: We will adjourn at 3:30. 22 and we will tell her that. We will tell the jury why. 23 (Whereupon, the following proceedings 24 took place before the Court and the Jury.)

THE COURT: Counsel has agreed to our

adjourning early enough today in order for a juror to teep a doctor's appointment. What time do you have to leave here? 3 JUROR NO. 9 (GULINI): Quarter afte 1 three. THE COURT: We will adjourn at that time. Proceed. RONALD B. WILLIAMS 8 Called as a witness, being previously duly sworn, was 9 further examined as follows: 10 OSS EXAMINATION 11 BY MR. RICHARDS: 12 Mr. Williams, to refresh your recollection, you were 13 testifying Friday, that one of the reasons given by 14 Mr. Winston for your discharge was your failure to 15 obtain your A.T.R. is that correct? 16 That is correct. A 17 THE COURT: I believe that there was 18 a pending offer on Friday, and you and Mr. Shanahan 19 were examining an exhibit, which had been offered 20 in evidence? What about it? 21 MR. RICHARDS: That was the Brady material 22 that had been just handed to us. 23 THE COURT: I am sorry. Go ahead. 24 BY MR. RICHARDS:

Now, earlier in the year of 1974, had Mr. Bell spoken Q to you about obtaining your A.T.R.? 3 Yes, he did. And had he spoken to you several times regarding that? 5 I don't know what you mean by several. Maybe two or three times. Two or three times. Did Mr. Herrington also speak to 8 you about your getting your A.T.R.? 9 I would say yes. I should obtain them. 10 And did he speak to you several times , or two or three 11 times? 12 No more than that, no. 13 And each time you were spoken to regarding the A.T.R., 14 what explanation did you have? 15 Wait until I really needed it. 16 What? 17 Until Mr. Winston said that he wanted me to get it, or 18 Mr. Bell told me when he wanted me to go. 19 Didn't Mr. Bell indicate to you that he did want you 20 to get your A.T.R.? 21 He would like to have me get my A.T.R., yes. 22 And when he spoke to you regarding this, what explanation 23 did you give him for not getting the A.T.R.? 24 That I would get them, but I don't know what explanation

I gave him for not getting them right then and there.

1		Money, maybe.
2	Q	Now, there came a time in May of 1974 when you obtained
3		a leave of absence to get your A.T.R.?
4	A	That is correct.
5	Q	And for what period of time did you request a leave of
6.		absence?
7	A	Approximately two months.
8	Q	And you enrolled in a program down in Florida, is that
9		correct?
10	A	That is correct.
11	Q	And is this a school which aids pilots in their training
12		for an A.T.R.?
13	A	No more than a college aids a person in getting a degree.
14	Q	What is the name of the school that you enrolled in?
15	A	Flight Safety Incorporated.
16	વ	But you enrolled for the specific purpose of obtaining
17		your A.T.R.?
18	A	That is correct.
19	Q	And do you know how long that program lasted?
20	A	That program should take at least six to eight weeks.
21	Q	The program wasn't for a two-week period?
22	A	No.
23.	Q	Now, the examination consists of two parts, is that
24		correct?
25	A .	That is correct.

And one part is a written part, and the other is a flying part? That is correct. A Now, did you complete the course within the six-week Q period? No. 7 Q Did you ever complete the course? I completed the course in Flight Safety to their 8 9 satisfaction. 10 Well, did you complete the entire course being offered by the school for purposes of obtaining the A.T.R.? 11 12 Yes. I did. 13 And how long did that course last? The schooling, itself, the classroom work between the 14 15 time that you started your schooling to the time that 16 the tests were taken was approximately ten days to 17 two weeks. 18 I see. At the end of the ten days or two weeks, did you take any tests? 19 20 Yes. A 21 And did you take a written test? 22 A Yes. 23 And did you pass the written test? 24 The second time.

No, did you pass the written test the first time?

- A No, I missed by three points.
- Did you pass the flying test at the end of the ten-day period?
- A No.
- 5 Q You flunked that, also?
- A Yes.
- Now, did you then enroll, or did you proceed with your
- training in the course? Did you enroll for a second
- 9 term in that course?
- 10' A No, not a second term.
- But you continued with your training, is that correct?
- 12 A Yes.
- 13 Q And did you repeat the same course of instructions that
- had been given to you the first ten days?
- 15 A No.
- 16 Q Was this an entirely different course of instruction?
- 17 A It wasn't a course.
- 18 Q Was it both classroom work and flying time?
- 19 A No.
- 20 Q Was it all flying time?
- 21 A Just some flying time.
- 22 Q And how long did that course last?
- 23 A It wasn't a course.
- 24 Q How long did the flying time instruction last?
- 25 A No more than about two hours.

Q . And at the end of the two hours, did you take a test? Yes, I did. 3 And did you pass that test? No. 5 All right. Did you continue with your training at that 6 school? No. 8 How long were you at that school? 9 I would say I was down there about eight weeks. 10 Eight weeks? 11 A Right. 12 And have you told me all of the instructions that you 13 received from that school during the eight-week period? 14 Classroom work and flying work? 15 Yes. Did you receive any additional classroom work 16 after failing that second flight test? 17 Additional classroom work, no. A 18 Q In flying? 19 Yes, about two hours. 20 I see. Now, thereafter, if I understand your testimony, 21 you returned to the company. When did you return to the 22 company? 23 The first week of July. A 24 All right. Was it on or about the time that you were Q 25 designated the co-ordinator-dispatcher?

- A No, not until the middle of the summer; the latter part of August.
- Q All right. Now, what did the job of co-ordinator-dispatcher entail?
- I was asked bythe girls in the office, since I had the most experience as a co-pilot, if I would co-ordinate the morning flights with Elmira, which we had just started during the summer, and they asked Mr. Winston what he thought of it. The senior office girl, and Mr. Winston was also in on the conversation, and they said, 'Fine, you should by now understand what we do around here.'

And so Mr. Bell said, 'Fine', and later a letter came out stating that I would have that morning job of co-ordinating flights.

- Now, did your duties as a co-ordinator-dispatcher include any flying time?
- A It said in the notice that generally I would fly flight 150.
- Q And this was a morning flight to Washington?
- 21 A At approximately 10:30.

- Now, did you, after obtaining the position of co-ordinator dispatcher, did you then fly the 10:30 flight?
- 24 A Not all the time. I did fly it.
 - Q Can you recall over a two months' period how many times

you actually did fly that flight? Not a great deal. 2 Would you be assigned that flight, or wouldn't anyone 3 assign it to you? The reason ,if I was assigned that flight, was because A 6 we would have a larger piece of equipment scheduled for that flight, which I was checked out to fly, and 8 we had new co-pilots there at the time, who could only fly the smaller equipment, and they weren't allowed to 10 fly that much. So 150 would then be given to them to 11 build up their flying experience. 12 Did you ever speak to Mr. Bell, or Mr. Winston regarding 13 getting in any more flying time? 11 A Only as much as they wanted to put me on. 15 Now, I understand that you attended the meeting of 16 October 5th at which Mr. Winston spoke to a group of 17 co-pilots, is that correct? 18 That is correct. 19 Q And now, at that meeting you were responsible for taping 20 what transpired, is that correct? 21 That is right. A 22 And I believe in your testimony that you indicated

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earlier that Mr. Winston, toward the latter end of

his talk, was reading from a statement; do you recall

23

24

25

that?

	1	
1	A	Yes, he was.
2	Q	Now, were you able to determine if he had read entirely
3		through that statement?
4	A	From which, the tape?
5	Q	Just from your observations of his reading the statement?
6	A	I am sorry?
7	Q '	Did you observe Mr. Winston reading the statement at that
8		meeting?
9	- A	Yes.
10	Q	And did you notice if he had read the entire statement?
11	A	To our satisfaction he had completed the statement.
12	Q	Now, when did you check the tape; after he completed
13		reading that statement?
14	A	Not until after the entire meeting was completed
15		with Mr. Winston and Mr. Bell.
16	Q	Well, the tape Mr. Bell's statement is on the
17		other side of the tape, isn't that correct?
18	A	Correct.
19	Q	And presumably you had to turn the tape over?
20	A	Right.
21	Q	My question is to you: when did you turn the tape over
22		after Mr. Winston completed?
23	A	Yes, after Mr. Winston completed.
24	Q	And it was only at that time, after he completed talking
25		that you checked the tape to determine if it was

completed, is that correct? Correct. 3 And when you checked the tape, you found that it had 1 gone over the complete side? 5 Yes, sir. 6 Now, with regard to the union meeting that you attended, the first meeting that has been testified was held 8 either October 2nd or October 3rd, 1974, did you get 9 any notice, or a letter of that meeting? For this meeting that we are just talking about? 10 11 Yes, we are talking about the meeting at the Holiday 12 Inn? 13 At the Holiday Inn? 11 Yes. Yes. Orally I received a message. 15 Well, did someone speak to you about it, or had you 16 learned about that meeting? 17 I only learned about it by almost accident. 18 A Almost accident? 19 I overheard people talking about it. 20 You overheard some co-pilots speak about it, and you 21 learned about the meeting? 22 Yes, but they weren't, of course, trying to keep it 23 A 24 from me. 25 I am not asking you that.

1	A	Right.
2	Q	I am asking you how you learned about the meeting?
3	A	From the co-pilots talking, yes.
1	Q	And once you learned about the meeting, did you speak
5		to anyone about going to this meeting?
6	A	I asked them what they were talking about.
7	Q	And then what?
8	A	They said we didn't invite you because we didn't know
9		whether we should invite you.
10	Q	But in any event, at this point you asked if you could
11		attend the meeting, was that correct?
12	A	They asked me to attend, if I wanted to.
13	Q	I see. Now, at the union meeting that you attended not
14		only this one, but others up to the time of the election,
15		were you vocal at these meetings? Did you speak out in
16		regard to the benefits in the union?
17	А	I spoke about both sides.
18	Q	I am sorry?
19	A	I spoke pertaining to both sides, what a union could do,
20		and also what Mr. Winston had done for us or against us,
21		whatever.
22	Q	But did you, at that meeting, or did you indicate to
23		an F B I agent, who previously interviewed you, that
24		you did not speak out at these union meetings?
25	Λ	Do you went to say that again?

Yes. Did you indicate to an F B I agent, whom you 0 previously spoke with, that you did not speak out at 3 these meetings? 1 I don't remember saying anything about speaking out. 5 All right. Subsequently, prior to the time of the 6 election, you had a private meeting with Mr. Winston, is that correct? 8 A Before the election, yes. 0 Q And at that meeting, he discussed the pros and cons of 10 having a union at the place of business? 11 Yes, correct. 12 How long would you estimate this meeting lasted? 13 Oh, it seemed quite a while. I am just -- to the best A 14 of my knowledge, a good half hour or maybe even forty-15 five minutes. 16 Now, in the course of that meeting, you indicated to 17 Mr. Winston that you wanted to know both sides of the 18 picture, is that correct? 19 A That is correct. 20 And at some point there was a reference made to your 21 ballot, is that correct? 22 A Yes. 23 2 And at this meeting, did Mr. Winston indicate to you 24 that if you wanted to, you would turn over to him your 25 ballot, is that correct?

1	A	Yes, that is correct.
2	Q	And you indicated, at that time, that pilots who had
3		turned over their ballots were getting duplicate ballots
4		is that correct?
5	A	They may obtain duplicate ballots.
6	Q	And when you said that to Mr. Winston, he did not show
7		any surprise whatsoever, did he?
8	A	I would say ne did.
9	Q	You say he did show surprise?
10	A	Well, by are you finished?
11	Q	Sure.
12	A	Only by pausing. He paused and just looked at me,
13		and didn't say anything after I told him.
14	a	So you construed his pause as surprise to learn that the
15		pilots were getting second ballots?
16	A	Not that they were getting them, but they could obtain
17		them.
18		THE CLERK: Defendant's Exhibit I, marked
19		for identification.
20		(Document marked Defendant's Exhibit I,
21		for identification.)
22	BY	MR. RICHARDS:
23	Q	Mr. Williams, I would like to show you Defendant's
24		Exhibit I, marked for identification, consisting of
25		a statement, purported to have been made by you to the

Federal Bureau of Investigation, on January 31st, 1975.

Reading down to the bottom of this statement it says,

'Williams also advised that he informed Winston of the

existence of the second ballots. He stated that Winston

did not seem surprised that a second ballot was in

existence. Williams stated that he mailed in the second

ballot, and did not surrender that to Winston,' and is

that your recollection of the conversation, at that time?

- A That is correct, and I mentioned that to Mr. Chalenski.
- What appears in that statement that you made to the F B I agent is not correct?
- 12 A The one word.
- 13 Q I see.

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- A Changing the negative to a positive.
- Now, prior to your termination, did you have any discussions with Mr. Winston regarding your attitude to customers?
- 18 A Prior to my termination?
- 19 Q Yes.
- 20 A I did.
- 21 Q And those conferences that you had with Mr. Winston,
 22 did they take place before August of 1974?
- 23 A I would say yes.
- 24 Q And in substance, what was Mr. Winston saying to you regarding your relationship with passengers?

A	He said he would stand behind the decisions that we
	had to make at the counter.
Q	Did he ever speak to you about your attitude toward
	passengers, your abusive attitude, at all?
Α.	My abusive talk?
Q	To passengers.
A	He may have, yes.
9	And how many times did you estimate he spoke to you
	regarding your relationship to passengers?
A	Not very much, that he actually said something to me.
Q	More than once or twice?
A	Once or twice.
Q	Now, were you ever fired from the company before?
A	No.
Q	Well, if I understand your testimony, you were on a part
	time basis from 1968 August of 1968 to approximately
	October of 1970, is that correct?
A	Yes, approximately.
٩	Well, do you recall from December 22nd, 1968 to March
	16th, 1969 that you were not employed by the company?
A	On a full time basis?
Q	You were not even employed on a part time basis at
	that period of time?
A	There was give me the dates again, please?
Q	December 22, 1968 to March 16, 1969?
	Q A Q A Q A Q A Q A Q A

For a year? No, not a year. That is four months. I don't remember that long a span not flying. You don't remember not being with the company for that 5 period of time? 6 I was part time, at the time, right? I don't believe so, Mr. Williams. I do not believe that 8 you were with the company during that period of time. I am merely asking you if you know or recall the circum-10 stances? 11 I know I was not flying for them for a period of time. 12 Okay. And do you know why you were not flying i'r them 13 during that period of time? 14 For those dates it is hard for me to remember. 15 Had Mr. Winston discharged you in December of 1968? 16 Under the circumstances, I don't know what they were. 17 Had Mr. Winston previously discharged you at any time? 18 We had a discussion once in an aircraft where he asked 19 me if I wanted to be full time or part time, and he 20 would not listen to my side of the story and he said, 21 'I don't want to talk about it.' And I said, 'I will go 22 part time.' 23 And what was your side of the story at the time? 24 He said I was not available for flights.

Do you recall when this discussion took place?

A The date, no. Did you or was it true that you were not available for 0 3 flights? 1 I told him in the aircraft that that was not true. 5 Q All right. Now, isn't it true that you had problems 6 getting to the early morning flights? I may have been late on occasion. A 8 2 And then, as a matter of fact, wasn't it necessary for 9 -either Mr. Bell, or Mr. Winston, or even Mr. Herrington. 10 to speak to you about late arrival for flights? 11 A There were occasions. 12 0 And more than one occasion? 13 Occasions, plural, yes. 14 Now, if I recall your direct testimony, you indicated 15 that you felt that you were qualified to train other 16 co-pilots and did I understand you correctly? 17 A Other than flying duties. 18 Q Oh, so in essence you are talking about training other 19 co-pilots in counter duty? 20 Counter, and freight, yes. A 21 Did there come a time when you filled out a request for Q 22 a second ballot? 23 Yes, there was. A 24 And was that request filled out at a union meeting? Q 25

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Yes, it was.

And did you fill that ballot out at that meeting? The request, yes. And did you thereupon turn that request over to the union representative, Mr. Calder? 5 To the best of my knowledge, I did. 6 And were there more pilots who did the same thing as far as turning their ballots over -- I am sorry, their 8 request for second ballots over? 9 A Correct. 10 Incidently, you voted yes for the union? 11 Yes. 12 And you never told Winston at your meeting that you were 13 in favor of the union, did you? 14 Just like I stated, I wanted to hear both sides. 15 Well, at these union meetings, you didn't speak out 16 in favor of the union either, did you? 17 I wouldn't say I stood on the table, no. 18 Did you ever speak out in favor of the union at these 0 19 meetings, at any of these meetings? 20 I would say - I would say I may have. I don't 21 remember any particular words. 22 Well, Mr. Williams, do you remember testifying before 23 the Grand Jury in this matter, and being questioned 24 by Mr. Chalenski, and being asked this question on page 25 fifty-two by Mr. Chalenski: 'Did you speak out in favor

of the union?' 'Answer: No, I don't know anything about 2 unions. I just stood there and listened to what they 3 had to say and if they felt something was important and 1 I thought so, I said yes, I agree with you.' 5 Do you recall testifying to that? 6 Yes. A 7 And does that generally describe your attitude, or what 8 you said at these meetings? 9 A Yes. 10 BY MR. SHANAHAN: 11 Now, Mr. Williams, first of all with reference to 12 this instruction: how would you properly describe that 13 you indicated that it is not a course, but it was some 14 instruction in flying and it was classroom work that you 15 took up in Florida? 16 A Right. 17 Q And how do you describe that? You say it is not a 18 course, so what is it? 19 There is an A.T.R. course. A 20 I beg your pardon? Q 21 There is a course. 22 A

And it is a week of classroom instruction, and then

there is a time in which you schedule your written

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Yes.

examination that you take for the instruction just received. 3 I thought that you were correcting Mr. Richards that it 1 was not a course? I am trying to find out what we call it properly here. I didn't really say it was not a course. I think that the second time around --8 (Interrupting) Well, would it be proper for us to refer 9 to that as a course that you took at that location? 10 Yes, it was. 11 All right. Now, with reference to that, first of all, 12 that course of instruction, wasn't that a two-week 13 course? 14 No. Well, was there a stated period within which that course 15 16 would be completed, when you went to Florida for the 17 purpose of taking it? I never received any stated period of time. 18 Well, you told us about it in the manner that if I 19 followed your testimony correctly, that after going there, 20 and attending classroom schedules, and taking some flying, 21 that at the end of a week or ten days, or two weeks, you 22 23 took some tests? 24 Written tests. A

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Written tests, all right. Would that have been at the

1		end of that first leg of the instruction?
2	A	Correct.
3		
4	Q	And as I understand it, you failed both the written test
5		and the flying test?
	A	The written test.
6	Q	I thought that you told us
7	A	(Interrupting) At the end of that period of ten days
8		or two weeks.
9	Q	You failed the written test?
0	A	Right.
1	Q	In order to sucessfully complete that course, would
12		it be necessary to pass both the written and the flying
13		test?
4	A	That is correct.
15	Q	So that at that time, you had not sucessfully completed
16	0	the course, would that be right?
17	A	Not the first phase, no.
8	Q	Now, if you passed both of those tests at that time,
9 .		would that have ended your instruction?
20	A	The flying part the flying instruction didn't even
21		start yet.
22	Q	Well, did you take some tests, flying tests at the end
23		of this ten day or two week period, as you told Mr.
24		Richards?
25	Δ	No

All right. So that would it be correct, then, that the Q only test that was administered at that time would have been the written test? 3 Correct. 1 Which you did not pass? 5 A Correct. Now, if you had passed the written test, would your 2 course of instruction have continued, nonetheless? The word I am looking for is whether I had passed or 9 not --10 (Interrupting) No, if you had passed the written test 11 and you say you did not? 12 Right. 13 1.4 But if you had passed it would that have completed the 15 course? Only the schoolroom, the classroom portion of it. 16 That would have finished the classroom portion? 17 Correct. 18 And didn't you, when you went to Florida, take a two week 2 19 leave of absence originally? 20 21 A Negative. You did not? 22 23 A No. 24 What was your original leave of absence when you went

to Florida; how long?

- A I think I may have told him six weeks.
- 2 Q You knew that before you left? Don't you know what you told him?
 - A That was quite a while ago.
- So I take it that your answer is that you don't know what you told him but you think it was six weeks?
- A I told them when I left that it would take at least a week to get there.
- Do you want to answer my question now as to how long,

 if you can tell us, that you took your original leave

 or absence for, for the course?
- 12 A I cannot give you the exact dates.
- 13 Q You can't give us that information?
- 14 A No.
- Now, after you failed that first written test, did you have to repeat, then, the classroom instruction before you took a second written test?
- 18 A Negative, no.
- 19 Q Did you take a second written test?
- 20 A I did.
- 21 Q Did you pass that?
- 22 A I did.
- 23 Q And how long after the first test did you take the second one?
- 25 A Within -- I don't remember the exact time.

1	Q	Approximately?
2	A	About within a week.
3	Q	Within what?
4	A	Within a week.
5	Q	Within a week, all right. And what transpired as far
6		as this course or this schooling was concerned, then?
7	A	Some flying may have taken place, but we didn't get into
8		the flying extensively until the result came back from
9		the written.
10	Q	How long were you down there, taking this course, all
11		totaled?
12	A	Around from some period of May, the first of second
13		week of May, until the end of June.
14	Q	So that you were there two months?
15	A	No. In Florida, approximately six weeks.
16	9	Well, I don't know what you mean by in Florida. How
17		long were you involved in this course, all totaled?
18	A	From the time I left Binghamton to the time I returned
19		to Binghamton it would be approximately eight weeks.
20	Q	That was eight weeks?
21	Α .	Approximately.
22	Q	Didn't you tell us on Friday that your leave of
23		absence was for the months of May, June and July of
24		1974?
25	A	No, not that I can remember.

Q You didn't say that? A 2 I said that I returned in July but I did not say the 3 leave of absence was for July, that I remember saying. 4 Q But you remained down there for some time after your 5 leave of absence had expired? A The term of the leave of absence, we have not determined 6 7 how long it was, but I would say --8 (Interrupting) I am not trying to quibble with you, I 0 am trying to find out what your original leave of absence 9 was that you took when you left, and then how long it 10 was before you came back? 11 It was approximately six weeks, I would say, that I asked 12 A for, and I cannot swear to that. I would say it may have 13 taken me eight weeks at the most. 14 I see. If you had sucessfully completed that course 15 Q you would have had your -- what is it, your A.T.R. is 16 that what you called it? 17 The A.T.B. , or the A.T.R. 18 Whatever rating, would that be right? 19 Yes. 20 A And in order to move from the position of a co-pilot 21 to a captain, it would be necessary for you to have the 22 rating, would it not? 23 24 To fly --(Interrupting) To be a captain? 25

A To be a captain, yes. That was my question, right? Yes. 3 1 And it would have been necessary for you to have 5 successfully completed that course in order to have 6 received the rating? 7 Correct. 8 And as it developed, as I understand it, the flying 9 portion of the test, you did not successfully pass? 10 Correct. 11 So that at the time that you came back to Binghamton, 12 after completely eight weeks, or six weeks or however many, you still did not have your A.T.R. rating, would 13 14 that be right? 15 Correct, correct. Now, let me ask you: of previous to that time, there 16 17 had been a meeting or an arrangement that resulted from 18 the request of co-pilots for a gradual increase in pay, and that meeting was back in October of 1973, was it not 19 You are saying just the co-pilots? 20 A Well, now I don't want to quibble about that. 21 Q There may have been -- there was some arrangement 22 A that applied to co-pilots, and whether it was solely 23 co-pilots or not -- there may have been. 24

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There may have been. Well, as a result of the arrange-

ment that was arrived at between the employees of Commuter Airlines and the management of Commuter Airlines at that time, it was provided that this pay 1 increase was provided at the end of three years, and a co-pilot would qualify as a captain, isn't that right? 5 Would qualify? A 6 0 Yes. That was the program, wasn't it? 8 A I don't know of any program, no. Weren't you, as a matter of fact, the spokesman for the 9 co-pilots in connection with that arrangement? 10 11 A I didn't make any arrangements. Was there some understanding between the company and the 12. Q co-pilots that the co-pilots were expected to attain the 13 rank of captain either for Commuter, or for some other 14 airline, within a three year period? 15 Not that I can remember. A 16 Q You say that you can't recall any such thing? 17 18 A No. Well, you had been a co-pilot working full time, when? 2 19 The early 70's and maybe 1971. A 20 Maybe 1971. So that when we got to the year -- when we 0 21 got to the year 1974, when you went to Florida for this 22 course you were then, were you not, either at the end of 23 or close to the end of your three years as a co-pilot? 24 I never knew any stated period of time, but it is true

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that it would be about three years. And you have indicated this morning to Mr. Richards that Mr. Bell had spoken to you on more than one 3 occasion, as I recall it, about you getting your A.T.R. 1 rating? 5 That is correct. 6 And the purpose of getting the A.T.R. rating would be to advance from co-pilot to captain, isn't that right? 8 A That is correct. 9 And you say that Mr. Herrington also spoke to you on 10 that same subject a number of times, would that be so? 11 A I said he did. But I can't --12 (Interrupting) Is there some doubt about it? 13 I can't state that Mr. Bell did but more in my mind was A 14 Herrington. 15 Mr. Bell did this? Q 16 No. Mr. Bell, I can remember saying such a thing, but A 17 Herrington I cannot, but he may have. 18 I thought that you told us this morning in answer to 2 19 Mr. Richards that Mr. Herrington did speak to you on 20 that same subject. Am I mistaken about that? 21 Yes, yes, to that. A 22 So that then Mr. Bell and Mr. Herrington spoke to you Q 23

about it?

Yes.

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1 And I suppose that is the very reason that you went to Q 2 Florida, wasn't it? 3 A It was. 1 And now, when you returned from Florida, not having 0 5 passed this flying examination, you were without your 6 A.T.R. rating, is that correct? 7 Correct. 8 2 Now , you told us Friday that you wanted to continue 9 flying in order to get your rating up in this area of 10 the country, would that be true? 11 A You can obtain your rating in any area of the country. 12 You can get it anywhere, but it was your thought when 13 you returned that if you continued flying that you would 14 be able to get that rating up here, locally, would that 15 be right? 16 A Correct. 17 And that rating, is that something that is administered 18 or granted by the Federal Aviation Agency? 19 They give you the tests, right. 20 Fine, so it could have been given to you up in this area. 21 as well as in Florida, correct? 22 Correct correct. A 23 Okay. Now. I think that you told us Friday that when 24 you returned from Florida, you had some talk with Mr. 25 Bell, and that he could give you additional training

that you apparently would need in order to get this rating? I requested Mr. Bell. A 3 You requested him to do it. And I think that the way .1 that you left that with us on Friday was that Mr. Bell 5 just didn't do anything about it? 6 Everytime I approached him he would just say, 'We will A talk about it:. 8 Q Let me ask you a little about that. First of all, in 9 connection with the flying that you had been doing in 10 Florida, for the purpose of passing this, or obtaining 11 this rating, had you been flying in a particular type 12 of aircraft? 13 Where, in Florida or here? A 14 Florida. 2 15 The particular type of aircraft that they were using. 16 What is that? Q 17 A Piper Aztec A 18 An Aztec? Q 19 Yes. A 20 And that is the name by which a certain type of plane Q 21 is known, would that be right? Yes. that is right. A 23 And did Commuter Airlines have any Aztec planes? Q 24 When I first came to work for them, yes. A 25

- Q Now, I am talking about when you returned from Florida?
- 2 A When I returned from Florida, no.
- 3 Q And did you tell Mr. Bell that you would like to continue
- the instruction under his supervision in the same type
- of plane that you were using in Florida?
- 6 A No.
- Well, do you recall that there was a discussion between
- you and Mr. Bell that a customer of Commuter Airlines
- owned such a plane, an Aztec plane?
- 10 A Yes, he did.
- 11 Q And who was that?
- 12 A Mr. Ellis Klepper.
- 13 Q And how do you spell that last name?
- 14 A I would only be guessing.
- 15 Q Well, would you spell it?
- 16 A K-L-E-P-P-E-R, I guess it is.
- 17 Q Mr. Klepper was someone that you knew, was he?
- 18 A No.
- 19 Q You didn't know him?
- 20 A To say hello and that is it.
- 21 Q And was he someone that you knew of as a person who did
- 22 business with Commuter Airlines?
- 23 A Yes.
- 24 Q And he owned such a plane?
- 25 A Yes.

- And he owned such a plane?
- A Yes.

- Now, did Mr. Bell, at your request, go to see Mr. Klepper to see if you could rent that Aztec plane that he owned in order that Bell could give you supervision on that same type of plane?
- 7 A I think that he requested me to do it.
- Well, didn't Mr. Bell report to you, first of all, that

 Mr. Klepper was not interested in renting the plane for

 that purpose, but then after considering it, he changed

 his mind, because he knew your family in Binghamton?

 Wasn't there such a talk as that?
- 13 A Either with him or John Herrington. I can't say.
- 14 Q Well, with him or with Herrington. Was there some such talk on that subject?
 - A That he would be willing to let me use his plane, yes.
- Yes. And as a pre-requisite or condition present to

 Mr. Klepper's turning the plane over for this training

 period, weren't you told that he wanted to talk to you?
- 20 A Yes.
- 21 Q And did you ever go to talk to him?
- 22 A I talked to him over the phone.
- 23 Q And as a result of that talk, was that plane made available to you?
- 25 A Through -- yes, it would have been made available.

It would have been. Well, was it, in fact, is what I Q am trying to find out? 2 It was usually tied up. A 3 It was usually tied up? He was tied up. He wanted to be there. 5 A He wanted to be there? 6 7 A Right. 8 What does that mean? 9 It was hard to get a hold of him. Q It was hard to get a hold of him? 10 A Yes. 11 12 And you didn't need him but you needed the plane. I 13 presume? 14 Yes, but he is the one that wanted to come up and talk 15 to me. Actually, he said one day I will let you go with me, with him. He wanted to be there. 16 Well, in any event, nothing ever came of your getting Q 17 that plane available for that further flight training, 18 isn't that the way it all ended up? 19 I had trouble getting the plane and Mr. Bell or Mr. 20 Herrington at the same time. 21 Well, the way that you had left it with us on Friday, 22 it would appear here that Mr. Bell had just declined 23

that wasn't true, was it?

to have anything to do with your flight training, and

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- A I had trouble getting Mr. Bell to go out, yes.
- Q And you had trouble getting the plane to go out in it?
- 3 A Right, right.
- And as you were dealing with Mr. Klepper, if that is his name, as you were dealing with him, you never came back to Bell any further about flight instructions, did you?
 - A After trying this for at least a month, that is correct.
 - And this trying for at least a month, were your efforts with Klepper, isn't that right?
- 11 A No.

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- 12 Q With whom?
- A Mr. Bell, trying to arrange for the airplane and John
 Herrington and trying to arrange for the airplane, and
 Mr. Klepper trying to obtain the airplane, and once I
 obtained it, trying to get Mr. Bell to find time, or
 Mr. Herrington to find time.
- 18 Q It was everybody's fault but yours?
- 19 A I was trying.
- 20 Q You were trying, but never succeeded?
- 21 A This was during the summer, no.
- 22 Q Okay.
- 23 A I -- well --
- Now, so that you never did get, during your employment with Commuter Airlines, you never did get your A.T.R.

rating, did you? No. A Q And when you told us that your employment terminated, 3 that was one of the reasons that was given to you as to 1 why your employment terminated, wasn't that right? 5 A Correct. 6 And I think that you said that when the discussion was Q had with reference to terminating your employment, Mr. 8 Winston and Mr. Bell were there? 9 Correct. A 10 Is that right. Now, wasn't there, at that time, talk Q 11 that it was the agreement between the company and the 12 co-pilots that the co-pilot would advance to the rank 13 of captain within a three year period, and that you had 14 failed to pass the test necessary to do that? 15 It was never mentioned to me. A 16 It was never mentioned to you. And do I understand that Q 17 you are taking the position -- just a minute --18 (Interrupting) Okay. A 19 Listen to my question, if you will: do I understand that Q 20 you are taking the position with us here that you 21 never heard of such a program, on the part of the 22 company? 23 I will not say that. 24 You won't say that, all right. Well, you were aware

then of such a program, were you? Not during the period up to the time when I was let go. 3 That is, you had never heard of it up until January of 1 1975? It was never brought up to me. 6 Well, I don't care whether it was brought up to you in a conversation but I am asking you if you had ever heard 8 of that rule or arrangement, whatever you might want to .9 call it? 10 I do not remember. 11 You do not remember? 12 No. 13 And you have no recollection of having heard it before 11 you were discharged? 15 Operating procedures, but not a time period required. 16 When you say 'Operating procedures', Mr. Williams, what 17 are we to understand by that? 18 Upgrading is what I said. 19 On, upgrading? 20 I mean co-pilots to captain. 21 Q Was there an upgrading procedure that required a co-pilot 22 to become a captain in three years? 23 I do not remember the time period, no. 24 Do you mean you can't say whether it was three years

or two years or five years, is that what you are telling

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- A I do not remember it being stated -- there was no sheet that was sent out to me that I remember stating a period of time that the co-pilots had before he had to become a captain.
- And you say that you had nothing to do with arranging whatever this program was?
- 7 A Pay raises, but not ca tains, sir.
- 8 Q Didn't they both come at the same time?
 - .A They were two separate subjects, as far as I knew.
- But weren't they both adopted by the company at the same
 time? It was a periodic pay raise as well as this
 arrangement whereby the co-pilots qualified within a
 three-year period for captaincy?
- 14 A No time period.

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- No time period, all right. Now, then, when you were discharged, when Mr. Winston said to you as you tell us he did, that you had not attained the position of captaincy, was there any discussion between you and him with reference to that?
- 20 A Yes, sir.
- 21 Q Did you tell him that there was no time period, as you are telling us now?
- 23 A I do not remember what I said about this.
- 25 Did he tell you -- did he remind you, in fact, that the time period was three years and you were passed it?

A He may have. And you didn't argue about it? 3 I don't think I did, because I was trying. A Now, at the time that you were terminated, do you recall 5 the date of that termination, Mr. Williams? 6 A On or about the date of January 19th, 1975. On or about January 19th, 1975, all right. Now, the 8 election by the National Mediation Board had been held 9 on November 24th, and the ballots were opened, wasn't 10 it, in December of 1974? 11 The date I am not sure of. But it was --12 (Interrupting) Approximately? 13 Right. 14 So that your discharge was about two months after that. correct? 16 Correct, sir. 17 And the union -- the Teamsters had been certified as the 18 representative of the employees on December 4th, 1974. 19 correct? 20 Correct. 21 So that your discharge was more than a month after that, 22 correct? 23 Correct, sir.

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Now, you have told us that you did attend the meeting

at the Holiday Inn, what we have referred to here as the

1		'union meeting,' on October 2nd, would that be correct?
2	A	The date I am not sure of, but it is correct.
3	Q	The early part of October?
4	A	Right.
5	a	And that is the meeting that you were not specifically
6		invited to, but you heard other people talking about it?
7	A	Correct.
8	Q	And then you were asked to attend if you cared to so it?
9	A	Correct.
10	Q	All right. So you did attend that meeting?
11	A	Correct, sir.
12	Q	Now, at that time, were you working as morning co-
13		ordinator - dispatcher?
14	A	Correct.
15	Q	And as co-ordinator-dispatcher, I don't think that you
16		ever quite explained to us what your job was? Would
17 .		you tell us, please?
18	A	It was to check reservations in the morning, ma. sure
19		that the proper keys were on the proper airplanes, and
20		they were able to fly, tell Elmira how many people we
21		had, and make sure that they used the proper airplane.
22		and check weather.
23	Q	When you say, 'use the proper airplane' what do you mean
24		by that?
25	A	Pertaining to loads. Using a smaller airplane, or a
		a series a sumarrer arrhrane, or a

	II .	
- 1		larger airplane.
2	Q	So that the type of airplane would be dictated by the
3		amount of passengers and the amount of the load, would
4		that be correct?
5	A	Correct.
6	Q	And that was the usual customary practice of the company?
7 -	A	Correct.
8	Q	And what else was your work?
9	A	It was too, if there was a weather problem in the
10		morning at Binghamton, that I would also have to get
11		crews out of bed and bring them up to fly the morning
12		flights, if the improper crews were on duty.
13	Q	You identified some exhibit for us today, which was
14		a letter, as I remember, from Mr. Bell, assigning that
15		particular work to you?
16	A	Correct.
17	Q	And do you remember about when that was that you were
18		assigned to that type of work?
19	A	Late summer, or the first part the last part of
20		August or the first part of September.
21	Q	Of 1974?
22	А	Yes, 1974.
23	Q	And would it have been shortly after your returning
24		from Florida?
25	A	Within a month and a half.

Q Within a month and a half? 2 Yes. 3 All right. And I take it from your description of that 4 work that you were doing what you had described to us 5 what was primarily desk or counter duty, would that be 6 right? 7 A lot of office work. 8 All right. And you worked with the women that were 9 employed in the operations office, in conjuction with 10 this, did you? 11 Correct. 12 And at the start, as I understand it, you were assigned 13 to a morning flight in addition to those duties, among 14 which was the flight to Washington and return? 15 A I was not assigned permanently to it. no. 16 That was the way it started, am I right about that? 17 No, no. 18 Well, you mentioned --19 - A (Interrupting) I would generally fly it. I was 20 available to fly that flight, so therefore I would be 21 the one to take that flight. 22 Q That is known as flight 150 to Washington and 151 back 23 from Washington to Elmira? 24 A. Correct -- Binghamton.

All I want to find out is that in connection with your

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Q

duties as a co-ordinator-dispatcher, did you also fly a flight? 3 I flew a flight, yes. And over how long a period of time did you have both the dispatching duties that you have described to us, 6 and flying the flight? Over how long a period of time did those two things continue? 8 From late August until the time I was let go in January. 9 Well, isn't it true that you were removed from that 10 position as co-ordinator-dispatcher at some point; that 11 you no longer had those duties? 12 Not that I can remember, never. 13 Never? Well, am I to understand, then, that you were 14 performing the duties of co-ordinator-dispatcher from 15 September, and I take it that was the date of that letter that we talked about, from September 5th of 1974 16 right through until January 19th of 1975, the date of 17 18 your discharge? To the best of my knowledge, that is what I was doing, 19 20 yes. Didn't your duties as a dispatcher-co-ordinator actually 21 22 terminate in -- on December 5th of 1974? After the balloting? It may have. I can't remember. 23 And then when your duties as co-ordinator-dispatcher. Q as a practical matter, terminated, you went back to your 25

regular duties as co-pilot, would that be right? It should be, yes. A Now, let me ask you: was this job that you had of co-ordinator-dispatcher, did that result in any pay 5 increase to you? A No. So that your pay was the same when your duties as co-8 ordinator-dispatcher terminated, and you went back to co-pilot? They never changed at all during that whole period. 10 All right. Now, you have told us of attending this 11 meeting, now, on October 3rd, or 4th, or 2nd, whatever 12 it was, the union meeting the early part of October. 13 And then there came a time when this meeting was 14 15 scheduled for all of the co-pilots, and I am talking now 16 about the meeting with Mr. Winston where he spoke, and 17 Mr. Bell also spoke, and you attended that meeting 18 as a co-pilo, would that be right? 19 A. That is right. 20 And that is the meeting where you brought along your 21 recording machine, and you told us that you purchased 22 a brand new tape for the purpose of recording what was 23 said at the meeting? 24 A Correct. 25 low, whose idea was it for you to tape that meeting?

Ira Josephson. Ira Josephson. And when did he communicate that idea to you? After the captains' meeting was let out. Time-wise, very late morning, just before lunch. 5 Jus pefore lunch. And where were you when Mr. Josephson 6 7 made that suggestion to you? 8 Most likely somewhere in the area of Pen-View Apartments. The area of what? Pen-View Apartments. 10 11 . And what are those? Are those the headquarters where the union was set up at that time? 12 I wouldn't say their headquarters. We had a meeting 13 14 room. 15 Who? Not the union, it was a room that the Apartments made 16 available to any of their tenants to use, and we used 17 18 that room. When you say you used it, who were you talking about? 19 The pilots. 20 The pilots used 10? 21 22 Yes. All right. And, with their meeting with Mr. Calder and 23 other union people, were they held at that location? 24

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A

Mr. Calder?

- Q Yes, Mr. Calder?
- A Yes.
- All right, so that you were somewhere in that area when

 Mr. Josephson suggested this idea of taping that meeting?
- 5 A Correct.
- And did you discuss that suggestion with anyone else
 before you went out and bought the tape and brought your
 recording device there?
- 9 A Very few people knew it was being done.
- 10 Q Did Mr. Calder know it was being done?
- 11 A I cannot say that he knew before we did it.
- I see. You had no conversations with him on that subject before you did it?
- A Not directly that I can remember, no.
- All right. So that when Mr. Josephson suggested this
 to you I take it that you were agreed with him that it
 would be a good idea to secretly tape that meeting,
 would that be right?
- 19 A Yes.
- 20 Q And in connection with taping it, it is true, is it not,
 21 that you didn't go to Winston or Bell, or anybody in
 22 connection with the company, and tell them that you
 23 were going to tape it?
- 24 A No.
- 25 Q So that as far as you knew, both Winston and Bell, or

1 anyone else connected with the company were totally unaware that you were doing it? Some pilots knew, but not Winston and Bell. 3 A When you say 'some pilots knew,' what pilots are you 1 Q 5 talking about now? I couldn't even give you their names. They might have A 6 7 been in the area when we discussed about making this 8 tape. I see. So that after Josephson suggested this procedure 9 Q 10 to you, was it you and he then that went out and bought 11 the tape? 12 A Correct. And you had a recording device or a machine of your own, 13 Q did you? 14 A Correct. 15 16 Q So that you used your machine, and the tape that you 17 and Josephson jointly purchased? 18 Correct. 2 And did you make the purchase out of your own funds or 19 20 out of Josephson's funds? 21 One of the two of us paid for it. I can't say which. A 22 And when that tape was taken, you indicated that the 23 microphone, if I followed you correctly, was fifteen or 24 twenty feet from the speakers? 25. From the recorder. A

From the recorder? Right. And I think that you said that there was a three-foot lead or something on it? Eighteen to twenty inches. 6 Eighteen to twenty inches, all right. And the recorder was concealed under a coat, or something of that nature? 8 Partially concealed, yes. 9 Now, I don't want to repeat what we went over the other 10 day, but I think that you said that you approached the 11 recorder after Mr. Winston completed talking, and 12 switched so that it would start recording on the other 13 side? Not after he completed -- well, yes, you are right. 14 After he completed his talk, I got up and switched it. 15 I think that you and I agreed, or you agreed that you 16 had missed the recording of part of what he had to say? - 17 18 Yes. And the part that you missed was that, a portion at 19 least, of the reading from some prepared statement? 20 .21 A portion, yes. And then I think that you also told us that you missed 22 23 the start of Mr. Bell's talk? To the best of my knowledge, yes. 24 A And that there was only a portion of his talk on the 25

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1		recording, correct?
2	A	To the best of my knowledge, yes.
3	Q	Now, in conjunction with all of this, this recording
4		that you were carrying on, did you make any notes as
5		you went along?
6	A.	No.
7	Q	Let me ask you: at the time that you made this recording
8		Mr. Williams, under the circumstances that you told us
9		about, what did you intend to do with it?
10	A	It was only meant you see, Ira Josephson
11	Q	(Interrupting) What did you intend to do with it?
12	A	Give it to Ira Josephson.
13	Q	You intended to give it to Ira Josephson. And did he
11		tell you what he intended to do with it?
15	A	He wanted to know what went on at the meeting.
16	Q	He wanted to know. Wasn't Josephson there?
17	A	No.
18	હ	Where was he?
19	A	He had already been let go.
20	Q	He wanted to know what went on at the meeting and your
21		purpose in making this tape was simply for Josephson's
22		information?
23	Α .	And the other co-pilots, if they wanted it.
24	Q	Anybody else that might want it?
25	Α	Right.

Q And were you aware that it ever got to Mr. Calder? A Not until this transpired. 3 Q And when you say 'this transpired' you are talking about 1 this trial? 5 This trial. I don't think that anyone ever -- no, at A 6 some time I may have come across Ira Josephson and he 7 may have told me that he gave it to Alex Calder. 8 Q I see, all right. Now, at this trial you have indicated 9 I think to Mr. Richards that this union meeting that you 10 had, that you did not particularly speak out in favor 11 of the union, wouldn't that be right? 12 A At this particular meeting, or any particular meetings? 13 At that meeting, the one that you talked to Mr. Richards 0 14 about? 15 That was in general. A 16 0 I beg your pardon? 17 I understood it to be in general, that is, all meetings. 18 Well, all right. You did not particularly speak out 2 19 for the union then at any of the union meetings, would 20 that be right? 21 Right. A 22 And there were, at these various union meetings, various 2 23 co-pilots, and pilots were there? 24 A Correct. And perhaps all of them not present at one meeting, but 25 Q

1		between the various union meetings, all of the captains
2		and co-pilots at one time or another attended some one
3		of these union meetings, did they not?
1	A	At some time or other, yes.
5	Q	And there is no question but all of those people were not
6		discharged, that is true, isn't it?
7	A	Not all, no.
8	Q	And you never told Mr. Winston, did you, that you were
9		particularly in favor of the union?
10	A	I never told him I was in favor of the union.
11	Q	And you never told Bell, did you?
12	A	I never told him I was in favor, no.
13		MR. SHANAHAN: May I have just a moment,
14		Your Honor, please?
15		THE COURT: Certainly.
16		MR. SHANAHAN: I think that that is all.
17		MR. RICHARDS: I have two questions.
18	BY N	R. RICHARDS:
19	Q	Mr. Williams, on October 18th, 1973, don't you recall
20		attending a meeting between management and the co-pilots
21		discussing compensation to be paid to the co-pilots?
22	A	I have attended a lot of meetings in my time there,
23		and I cannot say.
24	Q	Do you recall a discussion at this meeting where the
25		co-pilots were given salary increases on a three step

1	basis over a three-year period?
2	A A three-step basis? No.
3	Q You have no recollection of any three annual step
1	salary schedule arrived at by agreement between the
5	co-pilots and management?
6	A No, I have not.
7	MR. CHALENSKI: I have one exhibit that
8	I would like to obtain, and may I be excused for just
9	a minute.
10	THE COURT: Surely.
11	MR. CHALENSKI: Do you have the company
12	memorandum?
13	THE CLERK: Yes (Offering).
14	Government's Exhibit thirty-five, marked
15	for identification.
16	(Document marked Government's Exhibit
17	thirty-five for identification.)
18	RE-DIRECT EXAMINATION
19	BY MR. CHALLNSKI:
20	Q Mr. Williams, I hand you Government's Exhibit thirty-five
21	for identification, and it is a document dated April 26th
22	1972, and have you seen that document before?
23	A Yes.
24	Q And is that one of the regular messages to pilots and
25	co-pilots issued by the Defendants?

Yes, it is. MR. CHALENSKI: The Government offers 3 Exhibit thirty-five in evidence at this time (Offering to Counsel). MR. RICHARDS: No objection. THE COURT: Received. THE CLERK: Government's tnirty-five, 3 received in evidence. 0 (Government's exhibit thirty-five for 10 identification, received in evidence.) 11 MR. CHALENSKI: May I read from that 12 exhibit? 13 THE COURT: Yes. 14 MR. CHALENSKI: Ladies and Gentlemen, this is a memorandum on the letterhead of the Broome 15 County Aviation, and its subject is 'Co-pilot Upgrading 16 17 and Reserve Captain Program.' 18 It is dated April 26, 1972. 'This is to set forth the policy in 19 regard to upgrading of co-pilots to captain status 20 21 within the needs of our Flight Operations.' 22 'In general co-pilot positions are 23 considered learning pilot positions. Those serving 24 in this capacity are expected to invest diligent 25 efforts to improve their pilot proficiency and

qualifications. '

'During this period, they will fly with numerous captains, all of whom have many pearls of knowledge from the depth of their experience which are worthy of the co-pilot efforts to learn.'

'As Captains reach a level of experience within the operation, they are designated as Instructor Captains giving them authorization to teach in certain aircraft and operations which we conduct.'

'Co-pilots to be considered for upgrading will be those who fully avail themselves to the training and knowledge available to them. Co-pilots who have the move-up goal in mind are expected to exercise a mature initiative towards this goal.'

'Instructor Captains are not implored

to try to teach every co-pilot. Only those who demonstrate a desire to learn are really worthy of the effort

The disinterested and those who already know all there
is to know about aviation and flying should seek other

employment since it's doubtful that they will ever be
able to perform within the company policies and objectives.'

'The company policy and preference
is to promote captains from within rather than hiring
qualified individuals from outside the organization.'

'A co-pilot's long exposure to policies,

practicies, operating philosophy and procedures affords a considerable mutual advantage over a pilot from outside the organization.'

'Before a co-pilot can be considered for upgrading two conditions must exist. He must meet F A A insurance and other requirements on experience and a need for his services must exist.'

BY MR. CHALENSKI:

- A Have you read this memoranda before you came in?
- 10 A Yes.

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- I did not read four paragraphs, but is there any mention of a three-year requirement?
- A No, there isn't.
- of that memorandum of April 26th, 1972, ever changed subsequent to that date?
 - A Not that I can remember.
 - Now, you did indicate that you had heard something about a time limitation being required of the co-pilots to obtain the A.T.R. rating. When did you first hear of that time limitation?
- 22 A Not until they started pressing me on the fact that I 23 should get an A.T.R.
- 24 Q What time limitation did you hear?
 - A I can't say I had a time limitation.

1	२	Did you ever hear of a three-year requirement?
2	A	Not that I can remember.
3	Q	Did you ever hear of any time limitation?
4	A	No specific time or limitation.
5	a	What did they tell you, 1 any bing, about what period
6		of time you should obtain your A.T.R.?
7	A	They said that you, after a per'od of years, whatever
8		that may be , you could not obtain captaincy, as it
9		was put, at Commuter, then you may not become a captain
10		at Commuter and you might as well go to someplace else
11		. if you plan on becoming a captain.
12		MR. SHANAHAN: Would you read back that
13		answer.
14		(The previous answer was read by the
15		Reporter.)
16	BY	MR. CHALENSKI:
17	Q.	When did that conversation take place?
18	А	I nave no idea.
19	Q	Your best recollection, Mr. Williams?
20	A	It was not made specific to me. It was a general
21		meeting some time with the co-pilots. It may have come
22		up at the time when they gave us the pay raises.
23	Q	And about when was that?
24	A	That would have been back in maybe 1971 or 1972, the
25	1	early 70's and I don't know when exactly, I can't say.

was it more than a year before, say the union organizational efforts began? A Yes. Now, there came a time when you did pass the written Q 1 examination and you failed the flight examination needed 5 to obtain your A.T.R. Was there any requirement that 6 that flight examination be passed at that time? 8 You have two years. 9 Two years within which to pass your flight portion of 10 the test, and that is following the written portion? That is correct. 11 A 12 Now, how many planes did you -- strike that. Did you 13 try to arrange planes in which you could practice the flight portion of your A.T.R. to t? 11 I had to arrange planes that the company wanted arranged. 15 What planes did you try to arrange? 2 17 For myself? 18 Yes. 19 I tried to, in the beginning, when I first got back, A 20 I said that I would like to rent one of the company's 21 Navajos. 22 And what was the company's response to that? Q 23 A Like it wasn't done very often because it was quite 24 expensive. And I asked Mr. Winston about it and he

said -- well, he thought about it and he said, 'I will

1		give you the usual ten percent off that I give everybody
2		else.'
3	a	And did you accept that?
4	A	I said I would, if I had to, yes. I didn't say that
5		to his face. I would have done that.
6	a	And did you attempt to find a cheaper plane?
7	A	Find a cheaper plane?
8	Q	A plane that you could pay at a cheaper rate?
9	A	No, I was willing to pay the price for that airplane.
10	Q	What next did you do with reference to trying to find
11		a plane to practice on?
12	A	Well, that is when I initiated in trying to get Mr. Bell,
13		and he was there when the conversation took place, to
14		try and go out and fly with me.
5	Q	What plane did you try and get?
6	A	The Navajo.
17	Q	And that was from Commuter Airlines?
8	A	The day when I asked to rent an airplane for this
9		instruction, Mr. Bell was there, and Mr. Winston was
0.		there, and I said, 'All right,' and when I asked Mr.
21		Bell originally to go out and fly with me, it was in
2		that airplane.
.3	Q.	Wait a minute, Mr. Williams. Strike the question I
4		asked. You tried to rent a Navajo from Commuter, or
5		you aske about a Navajo and they said that they would

let you rent it at ten percent off. Did you rent F Navajo from Commuter? No. And did you attempt to obtain any other planes? 4 No. I tried to obtain Mr. Klepper's, after I had 5 attempted to rent the Navajo. 6 And you were trying to obtain Mr. Klepper's plane, as you testified on cross examination, for about a month? A Right. 9 And because of a problem of circumstances, you weren't 10 able to do it? 11 12 Correct. And did you attempt to arrange any other planes? 13 No. 14 And when did your -- when did that month period or so 15 end with regard to Mr. Klepper's plane? 16 The middle part of August, when we discussed becoming 17 a co-ordinator-dispatcher. 18 And did you then have anything to do with trying to obtain Q 19 a plane to practice on? 20 A No, I didn't. 21 22 Q You dropped it from then on? Right. 23 And did you mention anything to any of the Defendants 24 about trying to practice for your A.T.R.? 25

1	Α.	No, I didn't.
- 2	Q	Did you have any conversation with the Defendant from
3		that time on concerning your A.T.R.?
4	A	No, I didn't.
5	Q	Did the Defendants, prior to the time that you were fire
6		ever tell you that if you did not obtain the A.T.R. you
7		would not stay with the company?
8	A	They never said that.
9	Q	Did they ever say anything that sounded like that?
10	A	Not that I can remember, no.
11	Q	When you were at the meeting with the Defenda. inston,
12		in which you turned your ballot over to him, was anything
13		said with regard to persons who did not obtain who
11		did not hand their ballots over?
15	A	I am sorry, would you repeat the question?
16	ବ	At the meeting at which you turned the ballot over to
17		Mr. Winston, was anything said with regard to persons
18		who did not turn their ballot over?
19 .	A	Not specifically, no.
20	Q	Was anything said how that would reflect on their
21		feelings toward that situation?
22	А	I got the impression
23		MR. RACHARDS: (Interrupting) I will
24.		object to that. We are asking for a conversation.
25	pv	MP CHAIFNEYT.

Q Only what Mr. Winston said? We would like to have loyal people with the company. He said, 'Would you like to show your loyalty, to give us your ballot?' 5 There came a time when you did vote for the union. 6 you recall about what date that was? 7 No, I don't remember what date it was. 8 And in any event, it was prior to November 25th, the 0 date that Counsel recalled? 10 Yes, it was. A 11 Was union meetings held after that time? 12 Yes, there were. 13 Do you recall speaking at any of those union meetings? 11 Nothing specific, no. 15 You don't recall speaking? 16. I don't remember what I said, if I did speak. Nothing 17 Q (Interrupting) Do you recall the fact that you did 18 speak? 19 I am sure I spoke. 20 Okay. From after the time that you voted for the union. 21 would you characterize whether you were a union supporter 22 or not? 23 I would say I was. 24

those meetings be in support of the union?

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Would any statement that you made during the course of

1	A	I am sure that they would be in support of the union.
2	Q	And that was approximately two months during the
3		month period or two months before you were fired?
4	A	Yes.
5	Q	And with reference to flight 150, you testified, that you
6		on occasion, did not fly that flight, is that correct?
7	A	Yes.
8	Q	Who did fly that flight?
9	A	We had approximately five new co-pilots who did not have
10		the final experience to fly the larger aircraft, and
11 .		flight 150 was generally a low volume flight, and
12		therefore smaller planes were used.
13	વ	Did they express anything to you about whether they
1.4		wanted you to fly flight 150?
15	Α.	Yes, they were climbing all over me to fly 150.
16	Q	And by climbing all over you they told you that they
17		would want to fly 150?
18	Α	They would be calling me on the phone, and grabbing
19		me as I walked by, yes.
20	Q	And on occasion, did a co-pilot take over your spot on
21		150 so that he could not perform his other duties for
22		the company?
23	Α .	These co-pilots were sitting around doing nothing. They
1		wanted to fly it. There was nothing else to do.
5		MR. CHALENSKI: Thank you, Mr. Williams.

RE-CROSS EXAMINATION

BY MR. RICHARDS

- Mr. Williams, did you tell the F.B.I. agent that Winston did not make any specific oral or written threats to you at that meeting when you turned over the ballot to Winston?
- A No threats, no.

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- Q Is that correct, what you told the F.B.I. agent?
- A No threats, that I can remember.
 - And did you say at that time that you testified before the Grand Jury, page forty-six, 'Question: Did he say anything about letting anybody gc?'

'Answer: No, he didn't say he would let
anybody go,' and is that your testimony before the
Grand Jury?

- A That is probably what I said.
- Now, if I understand your testimony, the reason that you didn't take that flight 150 is because other copilots requested to fly in your place?
- 20 A Yes.
 - Q And would you give me the names of those co-pilots who made this request?
 - A Douglas Ton. He showed his face around there a lot, and that is the only one that I can remember right off hand. We had a group of five new co-pilots that I

1		had given instruction to on their counter duties, and
2		those were the five that I was allowing to fly flight
3		150.
4	Q	Would you help me by giving me the names of those five
5		new co-pilots?
6	A	Whoever came in the class with Douglas Ton and I cannot
7		remember who the names were. Pete Johnson and it has
8	نر	to be Ton and I have forgotten their names.
9	Q	Are you sure that you can't recall any others?
10	A	If you gave me a list of pilots' names, I might be able
11		to pick some of them out. I can't remember their names.
12	Q	Let me ask you this: It is my understanding that the
13		reason that you didn't make that flight 150 is because
1.1		some pilots, including Peter Johnson, came to you and
15		requested to fly in your place, is that correct?
16	A	Requested to take the flight, and not simply in my place.
17	Q	And then, a schedule change was made?
18	A	Yes.
19	Q	Now, do you have your A.T.R. now?
20	A	No.
21	Q	Are you speaking about the period of time from September
22		of 1974 up until November or December of 1974?
23	A	Whenever I was put in an assigned to take the flight.
24	Q	During this period of time there were five new co-pilots.
25		including Johnson, who requested to fly in your place

	11	
1		on this 150 flight?
2	A	The names I cannot say.
3	2	But is that a correct statement as to the request being
4		made by these co-pilots?
5	A	This one, or the co-pilots?
6	Q	Johnson?
7	A	I can't say Johnson. I may just have I am guessing.
8	ઘ	But you can't recall any other names?
9	A	If I had a list of names I could pick them out most
10		likely.
11		MR. SHANAHAN: I have nothing further.
12		RE-DIRECT AXAMINATION
13	BY N	IR. CHALENSKI:
11	Q	Were these men co-pilots that were stationed at Elmira,
15		or both Elmira and Binghamton?
16	A	They were new co-pilots and they would all be stationed
17		at Binghamton at that time.
18	Q	Would Gary Leonard be one?
19	A	No.
20	Q	How about DeLaurentis?
21	A	No, I think he was older than that, and I mean he had
22		been there longer.
23	Q	Do you recall Douglas Ton?
24		MR. CHALENSKI: I have this list of
25	-	names, I believe, outside and I would like to get it.

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I want to be correct with these names.
                           THE COURT: Yes.
                           (Whereupon, Mr. Chalenski left the
 3
           Courtroom for a moment.)
 1
     BY MR. CHALENSKI:
 5
           Now, I ask you whether any of these names are those
           co-pilots that asked you to fly the 150? First is
 7
           Milchael Baan?
 8
           No.
 9
           Davis Carr?
10
           NO.
11
           Mr. DeLaurentis?
12
           No.
      A
13
           William Dorise?
14
           No.
15
           Norman Furchild?
      Q
16
           Yes. He was not new, but he requested the flight.
17
           Fred Greenough?
      Q
18
      A
           No.
19
           Jim Hummell?
20
           He may have. I can't say for sure.
      A
21
           Peter Johnson may have been one?
      Q
22
           Possibly Peter Johnson.
23
           Dennis Larimore?
      Q
24
           Possibly Larimore.
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	9	Gary Leonard you have testified no?
2	A	No.
3	Q	Thomas Lewis?
4	A	Yes.
5	Q	Hugh McDougald?
6	A	Yes.
7	વ	James McKinley?
8	A	No.
9	Q	Ivar Ore?
10	A	Yes.
11	Q	Rand Peck?
12	A	Would you say again?
13	Q	Rand Peck?
11	A	I don't remember him.
15	Q	Bela Pusztai?
16	4	No.
17	વ	Donald Reeve?
18	A	No.
19	Q	Russell Schade?
20	A	Yes I can't be sure that one. Again, I hardly
21		remember him.
22	Q	Paul Snoll?
23	A	No.
24	વ	Robert Slough?
25	Α	Maybe.

I	9	Mr. Williams, this Government exhibit also contained
2		a letter dated November 13th, 1974. Is that your
3		signature on that letter? (Offering)
1	A	Yes, it is.
5	Q	And do you recall the proximity of that letter to the
6		time when you gave your ballot to the Defendant Winston?
7	A	Yes, during that period of time, sometime.
8	Q	It was after that?
9	A	Right.
10	Q	About how long after that?
11	A	Maybe a reek or two.
12	2	Okay. And in that letter that you signed, did you state
13		that Winston told you, 'I already have
14		MR. RICHARDS: Objection, that is not in
15		evidence at this point.
16		THE COURT: Sustained.
7		MR. CHALENSKI: May I offer the exhibit
8		into evidence? I am reading this in but may I offer
9		that letter in evidence?
0.0		MR. RICHARDS: I object to the admission
21		of this, what appears to be a statement signed by the
22		witness. Actually he has already testified that the
3		conversation winch transpired in Mr. Winston's office
4		involving Bell, and he indicated what he told the F.B.I.

agent, and this is just additional information.

MR. CHALENSKI: This predates what the Agent -- what was told to the F.B.I. agent. THE COURT: What are you offering it for? MR. CHALENSKI: To show that he did, on occasion, before talking to the F.B.I. agent stated --THE COURT: (Interrupting) That is a consistent statement -- is that what you are saying? R MR. CHALENSKI: Yes, Your Honor. THE COURT: Overruled. MR. SHANAHAN: May I say this mucy further: 10 there has been no question with reference to any of this So that the matter -- I wouldn't think that that statement 12 13 is appropriate. 11 THE COURT: On reconsideration, I think 15 that you are right, Mr. Shanahan. The objection is 16 sustained. 17 MR. CHALENSKI: There was testimony on 18 cross that Mr. Williams did not mention anything to the F.B.I. agent concerning the statements to Winston or 19 20 from Winston about loyalty during the course of the 21 ballots. THE COURT: You can use it perhaps to 22 refresh his recollection, whether he did or did not. 23 24 MR. CHALENSKI: All right.

25

BY MR. CHALENSKI:

1	Q Mr. Williams, do you recall making a statement
2	THE COURT: (Interrupting) Show it to
3	him. Don't read what he said, and ask him if that
4	refreshes his recollection on the subject.
5	BY MR. CHALENSKI:
6	Q Does that refresh your recollection of what Mr. Winston
7	told you during the course of the ballot, the meeting
8	at which you gave him the ballot?
9	A Yes, it does.
10	Q And what did Mr. Winston tell you at that time?
11	A I didn't have my ballot with me at that time when he
12	asked me if I would like to give it to him, and he said
13	that is all right, you can go an get it for me and bring
14	it to me any time, and I said, 'All right, I will.'
15	Was anything said with reference to loyalty?
16	A As I said before, 'If you want to show your loyalty to
17	the comapny, then you can give me your ballot, if you
18	like.'
19	MR. CHALENSKI: Thank you, Mr. Williams.
20	MR. RICHARDS: I have nothing further.
21	RE-CROSS EXAMINATION
22	BY MR. SHANAHAN:
23	Q Mr. Williams, you spoke about, if I followed you
24	correctly, that you did not take this flight 150 or
25	151, which was the flight to which you were assigned,

along with your co-ordinator-dispatching duties, because new pilots wanted to take that flight, is that what you told us here? 3 Yes. Now, the letter that assigned you to that co-ordinator-5 dispatcher work, was one that was here on Friday, and 6 was dated September 5th, of 1974, would that be right? That date on the letter, yes. 8 Yes. Now, let me as you first of all: during the two months that followed September 5th of 1974, how 10 many times did you fly during that two-month period? 11 Not very much. 12 Will you agree that you did not fly over seven times 13 in that two months? 11 If it says seven times, and you have records to say that 15 I don't know how many times. 16 Let me assure you that that is what the records show. 17 So it would be true that during this two-month perio. 18 that beginning September 5th of 1974 that you flew seven 19 times, correct? 20 A That may be true. 21 Yes. And were all of those seven flights on as 150 or 15 22 23 flight? I wouldn't say that they all were. 24

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Now, how many times, then, did you fly that 150 or 151

flight after September 5th of 1974, and while you were 2 acting as co-ordinator-dispatcher? 3 I have no idea. 4 Would it have been over two or three times? 5 I really don't have any idea. Now, these co-pilots that were asking to take your place Q on that flight 150 and 151, those apparently were people 8 who were in the employ of the company as of September 5th 9 of 1974 or about that date? 10 A Either employed at that time, or afterwards. 11 Well, of those that you indicated, you thought had asked 12 you to take that flight, could you now tell us which ones 13 of those that you have recognized as names of co-pilots 14 who asked to take that flight, which of them were employed 15 in early September of 1974? 16 A I could not toll you. 17 You could not tell us. When you talk about them as 0 18 being new pilots, or new co-pilots, you are talking of 19 them as people who had been in the employ of the company 20 for about what period of time? 21 A few months. A 22 That causes you to characterize them as new co-pilots? Q 23 A few months. 24 Q Two months? 25 A few months. A

1	Q A few months, okay.
2	MR. CHALENSKI: I have no further
3	questions, Your Honor.
1	THE COURT: You are excused.
5	(Whereupon, the witness was excused.)
6	MR. CHALENSKI: The Government calls
7	Dennis Larimore.
8	THE COURT: We will take a very short
9	recess.
10	(Whereupon, the Jury was excused.)
11	THE CLERK: Court stands for a short
12	recess.
13	(Whereupon, after a short recess, the
11	following proceedings took place before the Court and
15	the Jury.)
16	THE COURT: Proceed.
17	MR. CHALENSKI: The Government calls
18	Dennis Larimore.
19	DENNIS LARIMORE
20	Called as a witness, being first duly sworn, was
21	examined and testified as follows:
22	DIRECT EXAMINATION
23	BY MR. CHALENSKI:
24	Q Mr. Larimore, where do you reside?
25	I presently live in Hamilton, Pennsylvania.

Q	And what is your employment?
A.	I am employed at the H. and R. Coal Company of Bruin,
	Pennsylvania.
Q	And what do you do?
A	I am a corporate pilot.
Q	And did there come a time when you were employed by the
	Defendants, Commuter Airlines and Broome County Aviation
A	Yes, there was.
વ	And what is the date of your employment with them?
А	From July 1st, 19 I want to get my years right, yes,
	1973 until January correct, it was February the 17th,
	1974.
Q	And how long a period of time were you employed by them?
A	That was seven and a half months.
Q	And were those dates, would they have been 1974 to 1975?
A	Yes, they were.
a	And how long have you been a pilot?
A	I have been a pilot about seven and a half years now.
Q	And do you have your Airline Transport Rating?
A	Yes, sir, I do.
Q	And when did you get that rating?
A	I got that from a school of aviation in the summer, just
	previously before working for Commuter Airlines.
Q	What were you employed as, at Commuter Airlines?
A	I was a co-pilot.
	A Q A Q A Q A Q A Q A Q A Q A Q A Q A Q

And during the course of your employment at Commuter was there any other co-pilots that were there that had an Airline Transport Rating? 3 Not at the time that I was employed there, no, sir. 5 And during the course of your employment with the Defendant, did you attend any organizational meetings 6 of the union? Yes, sir, I did. 9 And when did you or what meeting did you first attend? I attended the first organizational meeting at the 10 11 Holiday Inn, and that was the first week of October. 12 I did arrive there late. I was flying that evening in 13 a late night flight to Washington, but I did attend 11 that meeting. 2 Did you attend any meetings subsequent to that meeting? 15 Yes, sir, I did. There were several other organization 16 meetings at Pen-View Apartments in which I did reside. 17 18 And did you have any part in arranging those meetings? 19 Yes, sir, I did. Being one of the pilots that did live there. I helped with the arrangements -- we had a party 20 room, a regular meeting place in the apartments, and I 21 22 did secure the key for that, or receive the permission 23 for using the room, and helped supply the coffee and 24 things like that.

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And you did the arrangements of supplying coffee and did

you do that while anybody else was present at the meeting? 2 Yes, sir, many of the other pilots were present. 3 And do you recall whether or not you did those same Q activities for the first meeting? 5 The first meeting at the Pen-View Apartments? A 6 Yes? 8 Yes, sir, I did. And do you recall whether John Herrington was present 9 at that first meeting? 10 Yes, sir, he was. 11 Did there come a time when you had any meetings with the 12 Defendant Winston or Bell individually concerning meetings 13 14 and union activities? Yes, sir. I had a meeting with Mr. Winston individually. 15 and he called me into his office. 16 When did that take place? 17 That happened after our group meeting of the co-pilots, 18 of which I was also a part of, probably about a week 19 later. It was just at a time when the ballots were 20 arriving from the union for our voting, from the National --21 (Interrupting) At that meeting, what did you do and what 23 did the Defendant Winston say? 24 Okay, sir. I knew what Mr. Winston was going to ask me --25 MR. RICHARDS: (Interrupting) Objection.

THE COURT: Sustained, strike it out.

BY MR. CHALENSKI:

- Just tell the Jury what you said, and what the Defendant Winston said?
- Yes, sir. Mr. Winston started out the conversation by generally reiterating pretty much what he had at the group meeting, giving the company a pat on the back, so to speak, is what I am trying to say here. In other words, he was building up a company benefits, versus --

MR. SHANAHAN: I beg your pardon, but I object to the characterization, rather than the conversation.

THE COURT: Tell us what he said, and give us the words as best you can remember them.

Mr. Winston specifically asked me if I had -- well, okay.

Mr. Winston specifically asked me if I had stated -- I

am -- I am getting squared away here now. Mr. Winston

stated the fact that he knew the ballots were going to

be arriving on company property at any time. I answered

with the fact that, yes, I knew they had because that

very day, which was on the first of the week on Monday,

I had received my ballot in the mail that very day. I

informed him of the fact that, yes, I knew the ballots

were going to be coming on company property, and in fact.

1 I had gotten mine in the mail that day, and I had filled 2 it out, and I had sent it in. BY MR. CHALENSKI: 3 1 Go ahead. 5 A Mr. Winston then stated, and he said, 'I will not ask you 6 which way you voted.' I replied with, ' That is the way 7 I would like to leave it.' 8 The voting was my right, but however I felt that what I had voted I had done what I thought 9 was best for the company and myself, and my family. 10 The conversation was pretty much ended 11 at that time and I was dismissed from his office. 12 13 Q Did you ever turn any ballots over to the Defendant Winston? 14 15 No. sir, I did not. Or Bell? 16 2 17 No. sir, I did not. And did you ever turn any of your ballots over to the 18 2 corporation? 19 20 No. sir. I sent my first one in. Did there come a time when you left the employment of 21 Q 22 the Defendant? Would you say that again, sir? 23 Did there come a time when you left the employment of 24 25 the Defendant?

A Yes, I did. And when did that take place? That was on February the 17th. Okay. And was it a voluntary termination? No, sir, it was not. And were you fired? Yes, I was -- yes, sir. And can you tell the Jury the circumstances of your 9 termination? 10 MR. SHANAHAN: Pardon me. I object to 11 the circumstances. If there was a conversation, I have 12 no objection to that. 13 MR. CHALENSKI: I will revise the question. Your Honor. 14 15 BY MR. CHALENSKI: Did you talk to the Defendants Winston or Bell during 16 the course of that day? 17 18 Yes, sir, I did. 19 And when did you first talk to either Defendant? Captain Bell called me on the telephone and asked me to 20 21 come to work. I asked if I should be in my uniform. I 22 thought it might be for taking a flight, and he said, no,

that that would not be necessary. Upon arriving at the

office where Mr. Winston then told me that I was to be

Operations office, Mr. Bell escorted me into Mr. Winston's

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1 terminated, my employment at that time. 2 Now, Mr. Larimore, please tell the Jury what the Defendant Winston said to you, and what you said during the course 3 of that meeting? 5 Yes, sir. Mr. Winston presented me with the fact that A 6 there had been economic set backs in the company and that he had to review the roster of pilots, and terminate 8 some pilots at that time. There would be two of us to be terminated, or fired. I asked Mr. Winston for 9 specifics, and why exactly I was being fired, and he 10 would not give me any reason whatsoever. He just said 11 12 that we would --MR. SHANAHAN: Pardon me. Just a minute. 13 Please, I object to that. 'He did not give me reasons.' 14 I suggest that he tell what was said. 15 THE COURT: Tell us what was said. Did 16 he say anything? 17 THE WITNESS: To the best of my recollection 18 Mr. Winston told me that I was to be terminated because 19 I would be of less value to the company in the future. 20 I asked for specific reasons as to termination. He 22 could not give me any. MR. SHANAHAN: I could not hear. 23 THE COURT: Did he say anything when 24 you asked him for the reasons? What did he say? 25

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THE COURT: All right.

BY MR. CHALENSKI:

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- Q Did he say anything else at that time?
- A No, that was -- okay. I specifically asked for a letter or general reasons for my termination so I could better myself in future employment. He said he would not give me a letter of any kind, again with no reasons, and that was about it.
 - Q Were you ever recalled by the company?
- 10 A No, sir, I was not.
- Have you left a forwarding address continuously since you left employment?
 - A My home of record has not changed, which was in Pennsylvania.
- And prior to the time that you were fired, were any persons hired by the Defendants?
- A Yes, there was.
- 18 Q And when were they hired?
- 19 A They were hired just previous to my termination.
- 20 Q How previous?
- 21 A Within two weeks.
- 22 Q What persons were they?
- 23 A There was a Mr. Potterman and a Mr. Mallish.
- 24 Q And in what position were they hired?
- 25 A They were hired in captain positions.

1	Q	Did they perform duties as captains?
2	A	No, sir, they were as co-pilots.
3	Q	They performed duties as co-pilots?
1	A	Yes, they did.
5	Q	During the fall of 1974, would you categorize yourself
6		as a new pilot?
7		MR. SHANAHAN: As what?
8	BY A	MR. CHALENSKI:
9	Q	As a new pilot for the company?
10	А	Yes, sir.
11	Q	And were you trying to do anything at that time with
12		regard to your flying time?
13	A	I was trying to build it as rapidly as possible.
11	Q	And in what way did you try and build up the flying
15		time?
16	А	I would solicit flights from other co-pilots.
17	Q	Do you recall soliciting any flights from Mr. Williams?
18	A	Yes, I do.
19		MR. CHALENSKI: Thank you, Mr. Larimore.
20		CROSS EXAMINATION
21	Вү	MR. RICHARDS:
22	વ	Mr. Larimore, if I understand your testimony, you had
23		been with the company a period of approximately seven
21		months, is that correct?
25	A	From June until February, yes, sir.

And were you hired around the latter week of June of 2 1974? Okay, yes, sir, I was. I was hired yout mid June. 3 A However, I did not come to work until the 1st of July. 4 You started work around the 1st of July? 5 A Yes, sir. 6 And you were terminated around the 23rd of February, 7 8 is that correct? To the best of my recollection it was the 19th. 0 All right. Now, did you attend the co-pilot meeting 10 Q 11 on October 5th, 1974? That would be the group meeting in the Holiday Inn? 12 A Yes, I did. 13 No, I don't mean the union meeting at the Holiday inn, 11 15 but rather a group meeting at which Mr. Winston and Mr. Bell spoke to you? Did you attend that meeting? 16 The first week in October, sir? 17 18 Q Yes. I don't recall the specific date of the co-pilots' 19 mee ting. I don't believe it was in the first week of 20 21 October. 22 But in any event, you did attend a union meeting in the Vestal Park Motel on October 2nd or 3rd, is that correct? 23 24 It was the first week of October. 25 And Mr. Calder, a representative from the Teamsters was

present at that meeting? A Yes, sir, he was. And did you have any responsibility for making arrange-3 ments for that meeting? No, sir, I did not. How did you learn about that meeting? 7 I would say by word of mouth, sir. I cannot remember 8 who told me. 9 Were you there throughout the entire meeting? 10 No, sir, I was not. 11 And could you give me a rough idea as to when you came 12 to that meeting? 13 I probably, oh, attended the last -- the formal reeting 11 was just finishing, just as I came in the door. But I 15 did meet Mr. Calder, and other people from the company. 16 How did you meet Mr. Calder? 17 Just through an introduction. 18 And do you recall who mandled the introduction? 19 No, sir, I do not. 20 Do you recall at that meeting if Mr. Calder specifically 21 mentioned the names of Robert Slough, Ira Josephson, 22 and Michael Baan in the group? 23 Not while I was at the meeting, no, sir. A 24 Now, do you recall the group co-pilots' meeting as

being sometime after that Vestal Teamsters meeting, is

1 that correct? 2 A Yes, sir. And did you attend that group session? 3 Yes, sir, I did. 1 And do you recall if Mr. Winston, toward the latter end 5 Q of his talk, was reading from a statement? 6 Yes, sir, ne was. A 8 And were you able to tell whether or not he had completed 9 reading whatever he had been reading from? 10 No, I really couldn't say that. And after Mr. Winston completed talking, did Mr. Bell-11 Q 12 start talking? 13 Yes, sir, he did. A And if you recall can you estimate the lapse of time 11 Q 15 between when Winston stopped talking and Bell started 16 talking? 17 It wasn't very long. I would hate to estimate the time. 18 Q A minute or two? 19 A few minutes, I would say. Not more than ten. A 20 Now, thereafter, I understand that you attended several Q 21 Teamster sessions, at the apartments? 22 Yes, sir. A 23 And you resided there, yourself, with your family, is Q 24 that correct? 25

Yes, sir, I did.

And you don't happen to recall who was the owner of those Pen-View Apartments, do you? They are managed by Ted -- well, a blank, and that is 3 terrible. No, I don't recall his last name. Now, how many of these union meetings at the Pen-View 6 Apartments did you attend before you -- with the captains, if you recall? 8 Two or three. 9 And did you notice if Mr. Herrington, John Herrington 10 attended every meeting that you attended? 11 No, sir, I could say that he did attend the first meeting. 12 But you have no recollection of him attending the second 13 or the third one, is that correct? 11 No. sir. 15 And in your direct testimony you were responsible for 16 certain parts of the arrangements of that meeting? 17 Yes, sir. 18 And your responsibility had to do with getting coffee 19 and donuts, and arranging for the meeting room? 20 Arranging for the room, yes, sir. 21 Now, do you recall whether a pilot by the name of Hugh 22 McDougald, attended any of those meetings? 23 Yes, sir, he did. 24 And did he attend more than one of those meetings?

Yes, sir, he did.

1	Q And did he attend every meeting that you were at?
2	A Not every meeting, no, sir.
3	Q Now, was Alex Calder at these two to three meetings
4	that you attended?
5	A Yes, sir, he was.
6	Q And at these meetings, was there any discussion among
7	the pilots including Calder as to ways to cost the
8	company money?
9	MR. CHALENSKI: Objection, Your Honor.
10	THE COURT: Overruled.
11	THE WITNESS: The subject had been
12	mentioned, yes, sir.
13	BY MR. RICHARDS:
11	Q And would you describe to me your recollection of what
15	was said concerning the subject?
16	MR. CHALENSKI: May the witness pin the
17	date of the meeting down?
18	BY MR. RICHARDS:
19	Q Well, Mr. Larimore, if you are able, was this the first,
20	second, or third meeting that you attended after the
21	group session of the co-pilots at which there was some
22	discussion of costing the company money, if you can?
23	A I would not even hazard a guess on dates. I am
24	obviously not very good on dates. I could not pin a
25	date down at all.

All right, fine. Would you tell me generally what was said regarding the subject of costing the company money? To the best of my recollection, it was mentioned that mixtures should be run, and the fuel rich position, which 5 would increase the consumption of fuel in the aircraft. 6 Q And the mixture, you are talking about fuel in the 8 aircraft, itself? 9 Yes, sir, that there is a control for the aircraft that 10 we can lower or enrich the mixture to the engine, itself 11 And the pilots can do this with shifting levers inside 12 the cockpit? 13 Yes, sir, he can. 14 And the discussion was to make the mixture richer, which meant more fuel consumption, is that correct? 15 16 A The subject was discussed, yes, sir. 17 And do you recall any other areas that were discussed 18 concerning how to cost the company more money? 19 That is the only one that comes to mind. 20 You have no recollection of, or any discussion of flying 21 the aircraft at a particular altitude, which would relate to fuel consumption? Do you have any recollection of 23 that being discussed? No. I don't. 24 25 Now, it is your testimony that you were requested to have

1		a private meeting with Mr. Winston, is that correct?
2	A	Mr. Winston requested the meeting with me?
3	Q	Yes, sir.
1	А	Yes, sir.
5	Q	And I was going to ask you that: how did you get notice
6		of that meeting?
7	Α .	I was called by one of the secretaries at work.
8	Q ·	All right. And in that meeting that you had with Mr.
9		Winston, it was approximately when, in relation to the
0		time, if you know?
1	Α	It was the first day the ballots had arrived on the
12		company property because I had gotten mine in the mail
13		and the specific date, again, I don't know.
14	Q	In any event, you went in and met with Winston, is that
15		correct?
16	A	Yes, sir.
17	2	Now, would you tell me precisely what, or to the best
18		of your recollection, what Mr. Winston said to you at
19		that meeting?
20	A	Once again, Mr. Winston talked about company benefits
21		versus union benefits. He stated that he knew that the
22		ballots would be coming on company property at any time,
23		and I told him that I knew they would because I had
24		received mine.
25	0	And you indicated that you had received one?

- A Yes, sir, I did,
- Q And did he say anything in response to that?
- A Yes, that is the time that he paused and he said, 'I wouldn't ask you which way you voted,' because I had informed him that I had received mine and I had put mine in the mail.
- Well, I am sorry, but after you told him that you had received your ballot, what did he say?
 - A I told him that I had received my ballot that very day and that I had already mailed it.
- I see. Was there any further discussion regaling ballots after that?
- A He simply asked me, 'I will not ask you which way you --
- 14 Q (Interrupting) What?

- I would not ask me -- he would not ask me which way I voted. I said, 'Fine, that is the way I would like to leave it.'
- And Mr. Winston did say he wasn't asking you which way you voted, is that correct?
- 20 A That is correct.
- 21 Q And that is the last that you did -- the last discussion 22 regarding any ballots with Mr. Winston on that date?
- 23 A Yes, sir, it is.
- 21 Q And what else did you discuss with Mr. Winston on that day?

That was primarily the whole conversation. A Q Did Mr. Winston ask you what your views of the union 2 were, personally? 3 No, sir, he did not. A 1 Now, did you have any further conferences with Mr. Q 5 6 Winston after that, before the date when you were to 7 be terminated? 8 A No. sir. 0 Then, I take it on or about the middle of February, 1975, you were called in to see Mr. Winston, is that 10 correct? 11 Yes, sir. 12 A And it was Mr. Bell who advised you to report to the 13 2 office? 14 Yes, sir, he did. 15 A Now, both Mr. Bell and Mr. Winston were present at this 16 conference? 17 Yes, sir. 18 And would you generally tell me, to the best of your 19 recollection what Mr. Winston said to you regarding your 20 termination? 21 He once again, Mr. Winston informed me that there had 22 been economic set backs in the company and he was going 23 to cut it back the pilot roster. After reviewing the 24 pilot roster, I was to be one of the ones to be terminated.

Did he indicate to you that in his judgement, your performance was satisfactory? 3 Yes, he did. And he also indicated to you that he had no complaints about the manner in which you handled the customers or passengers? He did not bring it up. Well, did he say anything to you in regard to that? Not to my recollection. 17 THE CLERK: Defendant's Exh. bit J, 11 marked for identification. 12 (Document marked Defendant's Exhibit J 13 ofr identification.) 14 BY MR. RICHARDS: 15 Mr. Larimore, I show you Defendant's Exhibit J, marked 16 for identification, purporting to be your testimony 17 before the Grand Jury. Perhaps just to help your 18 recollection, I would refer now to page seventy-eight 19 and do you recall being asked this question and giving 20 this answer, 'Did Mr. Winston have any complaints of 21 your job performance?' 'Answer: No, sir. I tried to pin him down and get something in writing. I even asked for 24 a letter so that I might better myself in my next job

and whether or not my performance had been satisfactory.

1 He said, 'no, your performance was satisfactory. I have had no complaints about you from customers or anything 3 like that.' 1 Do you recall him antioning that during the conference? 6 Yes, sir. 7 And Mr. Winston gave his explaination for your discharge 8 that economic conditions of the company at that time 9 were bad, is that correct? 10 A It was mentioned, yes, sir. 11 Did he say anything further regarding the economic 12 conditions of the company? 13 Not to my recollection, no, sir. 14 All right. Did he say that he had evaluated several 15 of the personnel or co-pilots and arrived or selected 16 you and someone else for discharge? 17 Yes, sir. 18 Did you have any discussions or did you ask him as to 19 what criteria or guidelines he used in the evaluations? 20 Yes, I did. A 21 2 And do you recall what your question was to him? A Just basically: why me? But I got no specific response. 23 I would be of less value to the company, I believe, was 24 the words that he used. 25 How long would you estimate this conversation with

U.S. COURT REPORTERS

		Mr. Winston lasted?
2	A	Probably not more than fifteen minutes.
3	Q	Was Mr. Bell present all throughout these conversations?
1	A	Yes, he was.
5	Q	Now, Mr. Larimore, do you recall being on a flight with
6		John Herrington and either in January of early February
7		of 1975, and having a conversation with Herrington at
8		the National Washington Airport, at which you mentioned
9		Mr. Winston by name?
10	A	Yes, I do.
11	વ	And what did you say to Mr. Herrington in that
12		conversation regarding Winston?
13	A	Specifically Mr. Herrington and I got into a discussion,
14		we will say, of pro and anti union just the situation
15		in general. As far as specifics as to exactly what I
16		said, I really can't tell at this time.
17	Q	Do you recall telling Herrington that, 'I hope that
18		_ittle son of a bitch gets what is coming to him.' Do
19		you recall saying that to Herrington?
20	А	I could I don't specifically recall it, but I could
21		have said it.
22	Q	You could have said it. Now, I gather from your testi-
23		mony that you have knowledge of two pilots being hired
21		just before you were discharged, is that correct?
25	A	That's true.

And the names of these two pilots are Potterman, and Malick? A 3 Yes, sir. Now, these were pilots, captains, isn't that correct? 1 5 Yes, sir. And your employment with Commuter was as a co-pilot, isn't that correct? That is correct. 8 9 And do you know of any co-pilots who were hired by 10 Commuter, just before you were discharged, or prior to the time that you were discharged? 11 12 No. sir. 13 Now, when you were hired in July of 1974, when did you 14 purchase your uniform for Commuter? 15 I purchased my uniform -- we had a gentleman come up from 16 a uniform company, and measured all of the ones that did 17 not have uniforms, and I believe it was -- I believe it 18 was in December. December of 1974? 19 1974. 20 A Do you recall the first contact that you had with that 21 22 uniform company concerning your uniform, from the time 23 that you were hired? 24 I don't recall it specifically, but that was --A (Interrupting) To be fair, would it be fair to say that 25

it was early in the fall of 1974? Okay, yes, I guess that that would be it; yes, sir. Now, would it be fair to say that the two persons that were hired by Commuter, before your discharge, had more experience than yourself? 6 Yes, sir, they did. You never indicated to Mr. Winston at that meeting that 8 you had voted for the union, did you? No. sir. 10 Mr. Larimore, at the time that you were hired who did 11 you talk with; Ted Bell? 12 Captain Bell, yes, sir. 13 And did he explain the salary that you would receive as 1.4 a co-pilot? 15 A Yes, sir, he did. 16 And did he indicate to you in this conversation the salary 17 was to be paid over a three-year increment basis? 18 Not to my recollection, no, sir. 19 Was there any mention at this meeting with Mr. Be nf 20 requirements that co-pilots receive their A.T.R.'s within 21 a period of time? I can't specifically say, no, sir, it didn't apply to me 22 A 23 because I had mine. I understand that. At the time that you were hired, 24 Q

didn't you receive additional monies because you already

	1	
1		had your A.T.R.'s?
2	А	Yes, sir.
3	Q	And that was indicated to you by Mr. Bell at that time?
4	A	Yes, sir, it was.
5	વ	And you can't recall any conversation as to requirements
6		of full pilots receiving their A.T.R.'s within three
7		years?
8	A	Not within no, sir.
9		THE COURT: We will take our luncheon
10		recess at this point. Don't talk about the case. Be
11		back at two o'clock. I don't want anyone to talk about
12		it with you, or in your presence.
13		(Whereupon, the Jury was excused.)
14		THE CLERK: Court stands in recess until
15		two p.m.
16		THE COURT: First, how are we doing?
17		MR. CHALENSKI: The F.B.I. is reviewing
18		somethings, and I may put him in for the chart, and that
19		would take a couple of minutes, and other than that, I
20		have three witnesses after Mr. Larimore, and I suspect
21		it will be as long on direct as Mr. Larimore was.
22		THE COURT: You will need the rest of
23		the day?
24		MR. CHALENSKI: Yes, it looks line an hou
25		and a quarter after we get back.

1				THE	COURT:	Any b	etter	stateme	ent f	rom	the
2	De	fense?									
3				MR.	SHANAHAI	V: W€	e have	talked	abou	t it	
	We	figure	about	thi	ree days	after	the (Governme	:: r	ests	
5				THE	COURT:	All r	right,	I see.			
6				(whe	ereupon,	the p	rocee	iings we	ere r	eces	sed
7	at	12:10	until	two	p.m.)						
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AFTERNOON SESSION THE COURT: Proceed. DENNIS LARIMORE 3 Called as a witness, being previously duly sworn, was further examined and testified as follows: (Whereupon, Dennis Larimore, having been 6 previously sworn, was returned to the witness stand and the following took place before the Court and the Jury.) 8 BY MR. RICHARDS: 9 Mr. Larimore, did you know a pilot by the name of Gerald 10 Excell? 11 Yes, sir, T lid. 12 And had he retired just before you were discharged? 13 Yes, sir. A 14 Now, in your discharge conversation with Mr. Winston, was Q 15 the pilot James Hummell mentioned? 16 No, sir, he was not. 17 Did I understand that Mr. Winston indicated to you that Q 18 he had evaluated two pilots and discussed some discharges 19 would that be correct? 20 Yes, sir, he did. A 21 But you have no recollection of his mentioning the

To refresh your recollection, Mr. Larimore, again 2

He did not at that time, no, sir.

name Hummell?

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referring to Defendant's Exhibit J, marked for identification, do you recall at the time that you were testifying before the Grand Jury, page seventy-seven, and I won't read your entire answer where you say, 'Due to the so-called economics of the company and other reasons, he had to review the roster of pilots and had to cut back and decided myself and another individual would be let go.'

'Question: Who was that individual?'

'Answer: James Hummell, who is not here at this time. He stated that we were going to be terminated and he decided Mr. Hummell and myself would be terminated because we would be of less value to the company.'

Do you recall testifying before the Grand Jury and giving that answer?

- The answer I gave at that time was after the fact. At the time that Mr. Winston talked to me, he would not tell me who the other individual would be. Later I learned it was James Hummell.
- Now, you further indicated that at one or more of these union meetings there was a discussion about costing the company money, and you indicated fuel consumption was one of the topics mentioned. Do you recall any discussion at that meeting regarding burning up cylinders on the

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aircraft? Do you recall any discussion along those lines? 1 No, sir, not specifically. 2 Well, do you recall it generally, from the discussions? Q 3 Well, again the idea would have been in burning up a A 1 cylinder, you not only jeopardize the aircraft but you 5 are jeopardizing your neck because you are going to be 6 in the aircraft at that time. Anything that could have 7 or might have been brought up would be a cost-involving 8 thing but not involving safety in any way. 9 All right. But you don't recall this topic being discussed Q 11 at any of these union meetings? 11 Not burning up a cylinder, no, sir. A 12 And do you recall any discussion concerning burning up 13 a tire on the aircraft, and too much use of the brake? 14 No, again you are involving safety. 15 I believe that you earlier indicated that you recall no Q 16 discussion about flying the Metro at a low altitude for 17 fuel consumption? 18 It wouldn't make that much difference in the Metro, 19 no. 20 Do you recall any discussion among the pilots about a 2 21 work slow down? 22 What I recall along that line, sir, is not so much of a 23 work slow down, but going strictly by the book. In 24 certain aircraft the passenger load and fuel load is 25

a teeter-totter, one way or the other type of circumstance. If you have so much fuel on board, you cannot take on so many passengers, or if you have so many passengers, you can only take on so much fuel. It would come up in a flight to Washington, D.C. in a Metro. If you had nineteen passengers and baggage, you had just right on the minimum fuel. It was common practice to put a little more fuel in the tank. That would be an an insurance so to speak, even with nineteen passengers. To go strictly by the book you would have negated this fuel, and if you didn't have enough fuel you might have to go to another airfield, like Baltimore, which was closer, and it would cause a delay in the flight, and you would have to refuel.

- And this topic was discussed at the meeting?
 - A Going strictly by the book, yes, sir.
- Now, was there any --- withdraw the question. Did you ever, or were you a co-pilot on flights into the metropolitan airports, Newark and LaGuardia?
 - A Yes, I was.
- 21 Q And were there certain designated runways which
 22 Commuter Airlines should land on?
- 23 A There were certain runways that we should not land on,
 24 and if at all possible, to get the preferred one, yes,
 25 sir.

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And in the event that a pilot had to use a non-designated Q 2 runway, would it cost the company more money? It could, yes. 3 A And was there any discussion at these union meetings 5 about having the pilots land on the non-designated runways? There could have been, but I don't recall, sir. 8 MR. HICHARDS: That is all I have. 9 BY MR. SHANAHAN: 10 Mr. Larimore, I have just a couple of questions. Relating 11 to the date of your discharge, I think that you said 12 that was February 17th, of 1974, correct? 13 The nineteenth, sir. A 14 And 1975. I beg your pardon? It would be the 19th of February of 1975, yes, sir. 15 A Am I misunderstanding that date? I don't mean to. 16 Q Was it February 19th, or February 17th? 17 It was George Washington's birthday. 18 I don't think that that is either one of those dates. 19 2 George Washington will be glad to know what we think 20 of him. Well, in any event, your discharge was either 21 the 17th or the 19th, would I be correct about that, 22 23 of 1975? 24 A Yes, sir.

All right. Now, the organization meeting that you

attended at the Holiday Inn. was way back around the first week in October of 1974, correct? Yes, sir, it was. And the group meeting that you had attended with the other co-pilots was on or about October 5th, of 1974, was it not, within the same first week of October? 6 I believe so, yes, sir. And the counting of these ballots that were sent in by 8 the various pilots and co-pilots, did that take place on November 24th, or November 25th, do you recall? 10 I don't remember the specific date, sir. 11 Or do you recall when the Teamsters was certified as 12 the representative of the employees of the company? 13 I believe that was in the latter part of November. 11 A You would be correct. 15 And I think that actually, Mr. Larimore, that was 16 December 4th or 5th. It was in the month of December? 17 The latter part --18 (Interrupting) Well, around a time period, and I don't 19 want to mislead you on time. 20 Okay. So that your discharge was an event that took place 22 a couple of months, at least, after this certification? 23 24 A That is correct. Now, with reference to the discharge, itself 25

1 I think that you indicated that you received a phone call from Mr. Bell asking you to come into Mr. Winston's 2 office perhaps the following day, was that the way it 3 1 was? No, he called me in the morning and just asked me to 5 A 6 come out to work. And you had some talk as to whether he wanted you to 7 Q 8 report in uniform, and so on? 9 Yes, sir. A And you did comply with his request that you come in 10 2 that same day? 11 12 Yes, sir. Would that be so. Now, other than Mr. Bell on the 13 telephone, asking you to come into Mr. Winston's office, 11 was there any further conversation with him that you 15 recall, in the telephone message? 16 With Mr. Bell, sir? 17 Yes, with Mr. Bell? 18 0 No, not -- no, Mr. Winston carried the conversation on. 19 A Well, I was talking at first about the telephone. 20 2 Other than to ask you to come in, when he talked to you 21 on the telephone, there was nothing further? 22 23 No. A And then when you did come in in response to that 24 0 request, I think that you indicated that you went to 25

Mr. Winston's office, and Mr. Winston and Mr. Bell were both in there at that time, or did I get that wrong? No, sir. No, sir. Seeing that Mr. Bell requested that I come out, he was at the desk in the outer office, and I approached him and asked him, 'What do you need, Ted?' 6 And he said, 'Just a minute,' and then he went into Mr. Winston's office. 8 Did he go into the office with you? Yes, sir, he escorted me into the office. 10 And you told me essentially what the conversation was 11 between Mr. Winston and yourself. Do you have any 12 recollection of Mr. Bell participating in that conver-13 sation at all? 11 Mr. Bell -- Mr. Bell did speak up. He mentioned that I 15 would be getting a severance pay check, but that was about 16 it, to the best of my recollection. 17 I see. The balance of the conversation, as I understand 18 it, then, was with Mr. Winston? 19 Yes, sir. 20 Now, just to clear something up: Mr. Larimore, you 21 indicated to us that Wr. Winston said in substance that 22 an economic situation required the discharge or termi-23

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that were selected for that, is that right?

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Yes, sir.

nation of two pilots, and that you were one of the two

1 And then I think that you then said to him in substance, 0 'Why me,' or something of that nature? 2 3 Α Yes, sir. Now, did they respond to that, do you mean, that he 4 said to you, 'I will not tell you, ' and did he say that 5 6 in so many words to you, or was that the conclusion that he couldn't tell you? 8 A Mr. Winston did not give me any substantial reason 9 whatsoever, other than economic cutbacks and I could do 10 less good for the company, and no specific derogatory 11 performance on my part. 12 Q What I was getting at: the early part of your examination, 13 Mr. Larimore, I think that the way that you expressed 14 yourself was that you asked him, 'Why me,' and he could 15 not give you any reason and then you said that that is what he said, 'I cannot give you a reason,' and that was 16 17 not said. I take it? 18 Well. I might have been a little bit confused at the A time, but that was it, quote 'I cannot give you a 19 20 reason,' no. 21 Q He didn't say that? 22 No. my mistake. 23 MR. SHANAHAN: That is all I have. 24 RE-DIRECT EXAMINATION 25

BY MR. CHALENSKI:

Mr. Larimore, you mentioned something about ways being 2 discussed of costing the company money, and that that occurred at the meeting of the employees of the Defendant. 1 Did you, over the lunch time, have you refreshed your recollection as to when that meeting took place? 5 This was subsequent or just after the firing of Ron Williams, which had been -- he had been discharged. We 3 had a group meeting to discuss what, if anything, ways 9 or means, or anything was at our disposal where we could voice our opinion, or show reaction in any way. 11 And at that meeting at which the conversation concerning 12 burning rich mixtures and possibly landing on the wrong 13 runway, and anything else that was mentioned, took place! 14 As I mentioned, flying the Metro by the book, so to A 15 speak, with fuel reserves as they should have been. 16 either the correct passenger load or the correct fuel 17 load, and if any delays were encountered on the route 18 of the flight that we should immediately ask for another airport other than the destination which we 19 20 were to be flying to, and flying strictly by the book, 21 and that was mentioned at that time.

Q Was flying of that nature mentioned prior to that time?

A No, sir.

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Now, what was the end result of this discussion concerning those activities?

A Nothing was ever enacted. We could not guarantee 2 one hundred percent participation among the pilots 3 and we still had a few dissenters, and we still had a 1 few individuals that were still loyal to Mr. Winston, 5 and with their participation, or without one hundred 6 percent participation we felt that any effort in this 7 respect would be individually singling out the pilots 8 or the personnel that were loyal for the union, and 9 that they would be putting themselves in jeopardy 10 because Mr. Winston's past action, he had fired people 11 for little or no --

MR. RICHARDS: (Interrupting) I will object, Your Honor.

THE COURT: Strike that out as hearsay. Strike it out.

BY MR. CHALENSKI:

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- And when was that decision reached? Was that at the same meeting?
- A Yes, sir, it was.
- So at this time that the employees left the meeting, was there any decision to take any concerted action to cost the employer money?
- A There were several, several actions discussed as I previously have mentioned, but none were ever enacted.
- 25 Q During the course of the conversation with Defendant

Winston at the time that you were terminated -- no, excuse me, at the time that you discussed the ballot with Mr. Winston, did you state anything further with 3 reference to the way you voted? 4 Mr. Winston asked me the question, 'I won't ask you the 5 way you voted.' I said, or my reply was, 'Good, that is 6 the way I want to leave it,' and that I did vote, and I felt that the way I voted was the best for the company. 8 myself and my family. Now, on cross examination, you also testified concerning 10 a conversation which you had with John Herrington, in 11 which you indicated you called the Defendant Winston a 12 name. Do you recall where that conversation took place? 13 Yes, sir, that was in Washington National Airport. 14 And over the lunch time, have you had an opportunity 15 to refresh your recollection as to what you said, and 16 what Mr. Herrington said at that conversation? 17 Yes, sir. I met Mr. Herrington --18 (Interrupting) Please tell the Jury what you said, and 19 what Mr. Herrington said? 20 I met Mr. Herrington in Washington International Airport, 21 and we were both laying over, so to speak, on a flight. 22 I was on a charter, and he was on another flight, 23 departing later. We had the opportunity to talk, and 24 we had a discussion, and the firings, and the union 25

stated that he --

MR. RICHARDS: (Interrupting) Objection, Your Honor, as hearsay.

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MR. CHALENSKI: This same question was asked of the witness on cross, as what did you say and what did Mr. Herrington say.

THE COURT: Yes, I am af d that you did open the door. Proceed.

THE WITNESS: Mr. Herrington stated that he felt that Mr. Winston's firings and actions had been warranted, that we should not go to, so to speak, union activities in the form of instability, causing the company problems.

I stated that I felt that all the personnel that had been fired at that time, had been fired over the union involvement, that Mr. Winston was grasping at straws, that he was looking for any reason he could, after he found out about the union involvement, for terminating an individual.

Again, Herrington, in a reply, the conversation carried on, and became a little heated, and Mr. Herrington stated that he felt that the reasons were justified, and I mentioned Sholl for the mechanical failure, and Ronnie Williams for reasons -- they were

fired for excess administrative reasons, and then he turns around and hires other individuals right after that, and it didn't make any sense, and that I did not at all agree with Mr. Winston's actions. I felt hopeless -- I stated that I felt helpless that the union would be able to shore up our defenses, so to speak, and that Mr. Winston would not be able to fire anyone else indiscriminately, that at his beckon will, for little or no reason.

- And during the course of that conversation did you call the Defendant a name?
- A Yes, sir, I did.

Q

- And what conversation took place surrounding that?
 - A Again, at my expression of helplessness, or whatever you want to call it, that the union really couldn't help us at that time --

MR. SHANAHAN: I object as not being responsive.

THE COURT: It is not responsive, and please hold the witness to a responsive answer, Mr. Chalenski.

BY MR. CHALENSKI:

What did you say, and what did Mr. Herrington say immediately surrounding your statement, in which you called the Defendant a name?

A At that, Mr. Herrington then did state that he felt 2 the reasons had been justified, and I felt, and I stated that I felt hopeless, and the union could not 3 help us, and I hope that, quote and unquote, 'The son 1 5 of a bitch would get what was coming to him.' Was anyone else present at the time that that conver-6 Q 7 sation took place? 8 A To the best of my recollection, Billy Hustock was present Q at that time. 10 Another employee of the company? 11 Another employee of the company. 12 Anybody else or any passengers? To the best of my recollection, there was no passengers. 13 We were not on a scheduled airplane flight, and no 11 passengers were present at that time. 15 Was anybody within hearing distance, to your recollection? 16 Not to my recollection, no. 17 A You were employed at about the beginning of July, 1975. 18 When did you get a uniform for the company? When did 19 you purchase the company uniform? 20 The tailor showed up at the company in Binghamton in, 21 I believe I said it was the fall of 1974, which at the 22 time I did order a uniform. It arrived on, probably 23 four weeks later, sometime. But I did order a uniform 24 when the tailor arrived. 25

	MR. RICHARDS: I didn't get the answer.
	(The previous answer was read by the
	Reporter.)
ВУ	MR. CHALENSKI:
ನ	Do you recall the approximate date the uniform arrived?
A	I don't. Me and dates are not okay.
ବ	Do you recall, during the course of your employment with
	the Defendant, how many occasions the tailor did come
	and fit employees for uniforms?
Α .	Only once.
	MR. CHALENSKI: Thank you, Mr. Larimore.
	RE-CROSS EXAMINATION
вч	MR. RICHARDS:
Q	Mr. Larimore, what document did you review to refresh
	your recollection this noon?
A	I had a verbal conversation.
Q	With whom did you have a verbal conversation?
A	I talked with some of my fellow pilots.
Q	And would you be more specific as to the names of those
	fellow pilots?
A	Yes. Paul Briggs and Ron Williams.
Q	Well, was Paul Briggs or Ron Williams, were they present
	during the conversation between you and Herrington?
A	No, sir, they were not.
Q	So how did they refresh your recollection if they
	Q A Q A Q A Q A

weren't present? 2 Okay. I had not previously thought specifically about 3 my conversation with Mr. Herrington in Washington, not 1 in detail. We were talking about some dates, and some 5 other things in reference to Mr. Briggs and Mr. Williams 6 Well, it just seems to me while you testified, Mr. Larimore, that you had more complete recollection as 8 to what was said between you and Mr. Herrington at this 9 National Airport in Washington, is that correct? 10 That is true. A 11 And did the additional conversation that you testified 0 12 to this afternoon come about from your conversation with 13 Briggs, this noon? 14 Not specifically, no, sir. I just thought about it a A 15 little bit more, and we talked. It was common knowledge 16 among the company that I had told other people at the 17 time that I had had a disagreement with Mr. Herrington. 18 So I take it, then, that after you had this discussion 19 with Herrington you had discussed this with other pilots 20 Yes, sir. In the company, and one of these pilots was Briggs, is 21 22 that right? 23 Yes, sir.

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And Briggs was the one that advised you?

No, sir, no, sir.

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I am somewhat confused as to how you get your recollection refreshed by reason of your conversation this noon. Did you have any conversations with anyone other than Briggs, this noon? Yes, sir, I was speaking with Mr. Chalenski. Did he show you any documents which assisted you in refreshing your recollection? No. sir. 8 Did Mr. Williams? Did you talk with him? 9 I saw no document during the lunch hour. 10 Did you talk with Mr. Williams this noon? 11 I talked with a group of --12 (Interrupting) Well, was Williams included in the group? 13 Yes, he was. A 14 15 And was anyone else included in the group? Jim Hummell was included in the group. 16 2 Anyone else? 17 Gary Leonard was in the room at the time. 18 And anyone else? 19 I be leve that was it. 20 All right. Now, of those pilots that you have named, 21 which one helped you refresh your recollection as to 22 your conversation with Herrington at Washington? 23 Through the lunch hour, sir, we discussed the happening 24

of events at that time -- none, sir.

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1	Q	None of those pilots helpen you refresh your recollection
2		this noon ?
3	A	All of them did, in that respect.
4	Q	And could you be more specific as to what information
5		was given to you by the other pilots this noon which
6		helped you refresh your recollection?
7	А	We talked about the time frame.
8	Q	Would you identify the specific pilots, if you would,
9		please?
10	A	It was not a specific pilot, sir.
11	વ	Well, then
12		MR. CHALENSKI: (Interrupting) I believe
13		that the witness has testified to his conversation with
1.4		the other pilots, and that there were not documents
15		used to refresh his recollection.
16		THE COURT: Please, it is cross examination,
17		Mr. Chalenski. If you would like to testify, you will
18		have to come up and take the stand. Proceed.
19	ВУ	MR. RICHARDS:
20	a	You may answer.
21	A	The last question was what?
22	Q	I am trying to identify the names of those pilots, and
23		what they told you this noon to help you refersh your
21		recollection as to conversations between you and
25		Herrington in Washington. Now, can you tell me in that

regard, can you tell me what was said to you this noon, by what pilot, which helped you refresh your recollection as to what happened down in Washington? 3 No, sir. I had the impression, when you testified, this morning, that the discussions about costing the company money 6 took place in union meetings, between the first meeting 8 and the time that the union was certified, am I correct as to that? 10 To the best of my recollection, it was after Ron Williams 11 was fired. Which would have been in February of 1975? 12 It was in January of 1975. 14 January, excuse me. Now, that isn't what you testified 15 to this morning, is it? 16 A To the best of my recollection, that is the way it 17 stands now, sir. 18 Yes, and apparently you had your recollection refreshed 19 this noon, which would have you change your testimony 20 as to when these conversations took place about costing 21 the company money, was that correct? 22 we had a conversation on that, yes. 23 And again, I would ask you: would you name the specific 24 pilots who refreshed your recollection as to when these

matters were discussed --

THE COURT: (Interrupting) I think that you are being repetitive, Mr. Richards. You have asked 3 that question at least four times. 1 MR. RICHARDS: Sir, we are in a new topic 5 which has to do with refreshing the witness' recollection. 6 THE COURT: It is repetitive, and proceed 7 to something else. 8 BY MR. RICHARDS: 9 Just one other thing, Mr. Larimore, you have indicated 10 that there were various means discussed at some union 11 meetings dealing with costing the company money, and 12 I think that you ended that up by saying that those were 13 just discussions and nothing was done to implement them? 14 Yes, sir. 15 Is that substantially right? 16 Yes, sir. 17 Was there anything done actually to implement any of 18 them? 19 Not to my knowledge. Never on a flight I was on. 20 Do you have any familiarity with the incident of repairs. 0 21 that were necessary to airplanes following those union 22 discussions, as compared to the normal repairs necessary 23 to airplanes?

Q Do you know that a number of airplanes were taken out

No, sir, I don't.

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of service because of damage to brakes, and damage to cylinders? Do you know that that was a fact? I know that any plane that I was ever on, no one even mentioned or thought of actually damaging an aircraft. You are damaging -- you are damaging not only your passengers -- you are endangering not only your passengers' lives, but your own, when you willfully damage an aircraft, and no one ever did it, to my knowledge. Now, do you mind answering my question. 10 I do not know of any statistics involved, sir. If there 11 was. I have no knowledge of it. 12 13 So that what you are saying to us is that if airplanes were disabled for causes that were discussed at these 14 union meetings, you would have no knowledge about it? 15 I do remember some cylinders being replaced at the time. 16 Cylinders are replaced due to normal maintenance, and 17 on compression checks in normal maintenance, there is 18 hardly any way, from the cockpit, if you can tell if 19 a cylinder was damaged or not. 20 Would it be right for us to understand that increase 21 in gasoline conumption was about the only thing that was 22 discussed that was regarded by the pilots as a safe 23 means of costing the company money? 24

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Yes, sir.

1 Q Or perhaps landing on the wrong runway? A Yes, sir. Again, there is no safety involved there. And so that we would understand that there is a normal 3 Q. landing fee that the company was obligated to pay when 4 5 one of the planes landed say at Newark, New Jersey? A Yes. 7 Q Would that be right. And if the plane landed on a runway other than a designated or referred runway, that 8 was a cash penalty that the company would then become 9 liable for, would that be right? 10 That would be correct, but I am not aware of it. 11 And would that penalty be approximately five times the 12 normal landing fee? 13 I have no idea of the amount, sir. A 14 RE-DIRECT EXAMINATION 15 BY MR. CHALENSKI: 16 Over the course of the luncheon hour, about how long 17 did you discuss this conversation that you had with 18 Mr. Herrington, with me, and with several other pilots, 19 or former pilots of Commuter Airlines? 20 Quite a while; forty-five minutes. 21 Did anybody tell you what to say? 22 No, sir. 23 Can you describe what was said to you by us during that 24 luncheon hour, with reference to that conversation, and 25

1	how it trickered your recollection?
2	A I suppose the words 'sounding board' would be an adequate
3	term, and there were questions bounced back and forth,
1	and 'do you remember this, 'and 'oh, yes, I do remember
5	that,' which in fact, I do remember. Previous to
6	luncheon, I did not remember.
7	Q You stated that you called the Defendant a name. What
8	made you feel like you had to call the Defendant a name?
9	Was that representative of the kind of questions that
10	were asked you over the lunch hour?
11	A Yes, sir.
12	MR. CHALENSKI: Thank you, Mr. Larimore.
13	MR. RICHARDS: No questions.
1.4	MR. SHANAHAN: Nothing further.
15	THE COURT: You are excused. Next
16	witness.
17	(Whereupon, the witness was excused.)
18	MR. CHALENSKI: The Government calls
19	Mr. James Hummell.
20	JAMES HUMMELL
21	Called as a witness, being first duly sworn, was
22	examined and testified as follows:
23	DIRECT EXAMINATION
24	BY MR. CHALENSKI:
25	Where do you reside?

167, West Street, Essex Junction, Vermont. A And what is your occupation? I am a pilot for Alleghany Commuter Airport, Burlington, 3 Vermont. And how long have you been a pilot? Commercial, or just a pilot, period? I have flown since 7 1969. 8 And when did you obtain your commercial license? 9 A In the spring, early 1971. 10 And were you employed by the Defendant, Commuter Airlines 11 and Broome County Aviation? 12 A I was. 13 And what were your dates of employment? I began there on July 1, 1974, and I was terminated on 1.4 15 February the 19th, 1975. Did you have occasion to attend a meeting of all co-pilots 16 on Saturday, October 5th, 1974? 17 Yes, I did. 18 A And have you had occasion to listen to a tape recording 19 or a portion of the remarks made by the Defendants 20 Winston and Bell, at that meeting? 22 Yes. I have. A And does that tape recording contain the entire 23 conversation made by the Defendants Winston and Bell? 24 I could not say if it contained every single word that 25

	was said that day.
Q	Are there portions of that conversation, to your
	knowledge, that were not recorded?
A	There is no portions that I recall that are not recorded.
વ	There may have been portions that were not recorded?
A	There may have been some words said that were not
	recorded.
Q	Did you take notes during the course of that meeting?
A	Yes, I did.
વ	And do you have those notes with you?
A	Yes, I have.
Q	Are the statements that were made at that meeting, and
	the accuracy excuse me, does or is the tape recording
	an accurate reproduction of what was said at that meeting
	by the Defendants Winston and Bell?
A	Yes, it is.
વ	And you recall that it is an accurate reproduction?
A	Yes.
Q	Did you have occasion to attend any other meetings at
	which the Defendants Winston and Bell spoke to employees
	of the corporation?
A	Yes, I did.
Q	And when did that meeting take place?
A	There was one meeting I am not sure on the date,
	but I also took notes of that meeting. I believe it
	A Q A Q A Q A Q A Q A Q

1		was two weeks to the day, later than that.
2	Q	Do you have those notes with you?
3	A	Yes, I have.
1	Q	And would those notes reflect your recollection as to
5		the dates of that meeting?
b	A	Yes, I would have the date in the margin.
7	Q	May I please have your notes?
8	A	Yes (Offering).
9		MR. CHALENSKI: May I have this marked
10		as Government' - Exhibit number thirty-six, for
11		identification.
12		THE CLERK: Government's Exhibit thirty-
13		six, marked for identification.
14		(Document marked Government's Exnibit
15		thirty-six for identification.)
16	BY	MR. CHALENSKI:
17	Q	Would you please refer to your notes to refresh your
18		recollection as to the date of that meeting?
19	A	The date of the second meeting was on 10/19/74;
20		September the 19th.
21	Q	And do you recall did the Defendant Winston, or the
22		Defendant Bell, speak at that meeting?
23	A	Yes, not I believe the actual address to the
24		pilots gathered was ty Ar. Winston.
25		And do you recall what the Defendant Winston said to the

pilots?

- A Yes, I recall the meeting and the substance of the address.
- Please tell the jury what you recall the Defendant Winston as saying?
- The main substance of the address was to list the company's options, if the ensuing union election were to go against the company. All of these options, and I probably cannot recall them out of my memory, but I can recall several of them.
- These are options that the company could take?
- 12 A Yes, they are.

MR. SHANAHAN: Did you say 'would' or

'could'?

15 BY MR. CHALENSKI:

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- Q My question is they could take?
- 17 A Yes, they were a list of the options that the company could take.
- And can you please tell the jury what those options were?

 These are options that Mr. Winston stated to the pilots

 present at that meeting, is that correct?
- 22 A Yes.
- 23 Q And please tell the jury what those options were?
- A Now, let me definitely be sure: this is the second meeting, the meeting of the nineteenth?

Q Yes.

He was talking about the options of the company, and one of them was that he could 'pull in his horns', and in other words, reduce the route structure, and apply only the most profitable routes. He could cut back the copilot staff and, now, I have in my notes, if I am allowed to refer to my notes, the list of the main things. I can recall one other was the reduction of the fleet size, and consequently a reduction of a necessary pilots. Also that he would, he himself, could become qualified to fly on the line, and thus further reduce his need for pilots, in his employ.

Could I be allowed to refer to my notes?

To the extent that you cannot recollect anything further, please refer to your notes, if they will refresh your recollection.

The first option that was mentioned -- I had them in chronological order listed: he said that he could just close the door and sell out the equipment and retire.

He said that that is the less desirable option. He did not want to do that.

Q And what was the second option?

I have already mentioned that: the second was the slow down, just to run Washington, and pull in the less profitable routes.

1 Q Do you recall a third option? In the course of the statement by the Defendant, also 2 just besides options, he would throw in the benefits. 3 what he considered --4 MR. SHANAHAN: I object to this. I thought that what we were doing was having the witness refresh his recollection, and then tell us what other options there were, and I think that we are some distance 9 away from that, now? 10 THE COURT: Yes, I think that he has 11 strayed from a responsive answer. 12 THE WITNESS: I do have other options. 13 BY MR. CHALENSKI: Do you recall what the third option was? 11 15 16 Please tell the jury what the third option was, and please don't read your notes? 17 I am just refreshing my memory. I won't read from them. 18 A The other option, or another option, was no fifth Metro. 19 The Metro was the turbine aircraft, and he gave a 20 deadline date by which he had to exercise his option 21 on that aircraft, and he stated that if the union was to come in, there would be no fifth Metro. 23 24 And would you call that the fourth option?

25

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Yes.

Okay, what was the fifth option? 2 There are no other options that I have listed, as such. 3 The rest of it is -- the other substance of the statement was --2 (Interrupting) Well, Mr. Hummell, then do you recall anything else that Mr. Winston said at that meeting? 6 A Yes, sir. 8 And please tell the jury what else he said at that 2 9 meeting? 10 Well, he discussed a contract that was signed by another A 11 Commuter by the name of Golden West, on the West Coast, 12 and he stated that that contract was an economic disaster, 13 and that he would close the doors, first. In other 14 words, before he would sign something that was anything 15 similar to that contract, he would close the doors first. 16 Q And did he say anything else? 17 The other items that were mentioned were in the line of 18 benefits currently provided by the company, and these 19 were the list inter-mingled with the options that we 20 have earlier discussed. 21 Do you recall anything else that he said at that meeting? 22 Yes, he said that one of the company benefits was that 23 there were company paid physicals. 24 Did he say what would happen to those benefits?

MR. SHANAHAN: Wait a minute. I object

to it, in that form.

THE COURT: Sustained.

BY MR. CHALENSKI:

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- Q Did he say anything about the benefits?
- He had stated that if there was a contract, if there was negotiations for a contract, in other words, if the union was to come in, that they were going to start from nothing. In other words, these benefits that he was enumerating some of, would be taken back, and you would have to start off fresh, giving the impression --
- Q (Interrupting) No, no, Mr. Hummell; we are not concerned with what impressions you got, but just what was said.

 What benefits did he mention?
- A Well, the travel expenses. This being that if a pilot was required to lay over --

MR. SHANAHAN: Pardon me. Now, the witness brings up a new subject, and proceeds to tell us what it means. I suggest if there was a conversation --

THE COURT: (Interrupting) Would you hold the witness to a responsive answer, Mr. Chalenski?

MR. CHALENSKI: Yes, Your Honor.

BY MR. CHALENSKI:

- What benefits did Mr. Winston mention? He mentioned travel expenses?
- A Paid waiting time.

1	Q	Paid waiting time? Okay, any others?	
2	A	No, not that I recall.	
3	Q	Do you have anything there that would help your	
4		recollection? Would your notes help your recollection?	
5	A	No, sir, the ones that I thought were significant enough	
6		to note	
7	Q	(Interrupting) No. That is all you can recall?	
8	A	That is all I can recall.	
9	ସ	Now, what does what travel expenses were you getting	
10		paid by Commuter, at that time?	
11	Α	As a co-pilot, if you were held over now, there is	
12		a differentiation, whether or not it was on a charter	
13		or a commuter flight, and the co-pilot on the commuters	
14		waiting time, waiting between two flights, if you get	
15		held in Washington for five or six hours, you got fifty	
16		cents an hour. That was your pay for meals.	
17	Q	And was that different for travel expenses, and you	
18		mentioned paid waiting time and travel expenses? Are	
19		they the same thing?	
20	A	Only the only differentiation would be on travel	
21		expenses if you were overright, and of course, the	
22		expenses of lodging were paid.	
23	Q	Did you have any individual meetings with the Defendant	
24		Winston, or Bell, concerning union organization activities	s?
25	A	Yes, sir, I did.	
	1)		CONTRACTOR OF THE OWNER, THE OWNE

1	Q And when did that take place?	
2	A I do not know the exact date. I know I do not know	
3	the exact date.	
1	Q Well, was it shortly before the ballots were counted?	
5	A Yes, it was. It was prior to that.	
6	Q And some time after you received your ballot from the	
7	National Mediation Board?	
8	A It was	
9	MR. SHANAHAN: (Interrupting) I object	
10	to it as leading.	
11	THE COURT: Sustained.	
12	BY MR. CHALENSKI:	
13		
11	, see reconstruction can you beare now	
	far, prior to the time that the ballots were counted by	
15	the National Mediation Board, that you met individually	
16	with the Defendant Winston?	
17	A Approximately three weeks before the ballot count date.	
18	Q Okay, and what did you say, and what did the Defendant	
19	Winston say at that meeting?	
20	A It was a reiteration of the statements made previously,	
21	the group meetings by the company owner, Mr. Winston.	
22	He asked me my general feeling, and also if I had decided	
23	had I made up my mind on how I was going to vote. I	
21	told him that I had not. I was very junior with the	
25	company at that time, and I said I was going to wait to	

1 a later date, toward the deadline, before making up my 2 mind, and feeling out the sentiment of the more senior pilots. 3 And the meeting concluded, then? Well, we also discussed remuneration; rates of pay. A And did you ever -- what did you do with your first 6 2 ballot from the National Mediation Board? 7 8 A I mailed it in. Q To the Board? 10 Yes, sir. And what did you do with the second ballot? 11 I still have it in my possession. 12 A Did you turn any ballot over to the Defendant? 13 14 No, I did not. Did there come a time when you left the employment of 15 the Defendant? 16 Yes, sir. 17 A And when did that take place? 18 On the 19th of February of 1975. 19 And did you meet with any of the Defendants concerning 20 Q that termination? 21 22 A Yes, sir. And was it a voluntary termination? 23 Q 24 No, sir. 25 You were fired?

1	A	The word 'fired' was never mentioned. I was terminated.
2	Q	And which Defendant did you meet with?
3	A	Present at that meeting held in the inner office of
1		Mr. Winston, were Mr. Bell, Mr. Winston, and Mrs. Winston
5		Mr. Winston's wife.
6		
	વ	And can you please tell the jury what the Defendant
7		Winston, and the Defendant Bell said, and what you said
8		at that meeting?
9		MR. SHANAHAN: Could we have the names,
10		and what they said?
11	BY I	MR. CHALENSKI:
12	Q	Please say the name, and what they said?
13	A	Mr. Winston said that I was being terminated due to the
14		fact that the company was over staffed. In the course
15		of the conversation, Mr. Bell did not make any entries.
16		MR. SHANAHAN: Would you read that answer
17 -		(The previous answer was read by the
18		Reporter.)
19	BY	MR. CHALENSKI:
20	Q	What do you mean by that, Mr. Hummell?
21	A	He did not take an active role in the conversation.
22	Q	He did not say anything?
23	A	He sat there.
24	Q	And now we are talking about what you said, and the
25		Defendant Winston said?

1	А	Right, because Mrs. Winston also said nothing.
2	Q	Please tell the jury what the Defendant Winston said,
3		and what you said at that meeting?
4	A	Well, after it became apparent to me that I was, indeed
5		. MR. SHANAHAN: I object.
6	BY	MR. CHALENSKI:
7	Q	Just what was said?
8	А	I was told at I was being terminated. In answer to that,
9		or in my reply, I said that I felt my termination was
10		for my suspected union activities, and I told the
11		Defendant, Mr. Winston, that the I, for one, would be
12		one to follow legal recourse of that action to the farthest:
13		end, and that no matter how many appeals it took, I would
14		see it to the finish.
15	Q	Did he say anything?
16	A	He acknowledged that his choice was correct.
17		MR. SHANAHAN: Pardon me, would you read
18		that back?
19		THE COURT: What did he say? What did
20		he say? I am sure that he did not say, 'I acknowledge
21		that my choice is correct.' What did he say, and not
22		what you were thinking. What did he say?
23		THE WITNESS: Yes, Your Honor. He said
24		that his choice of terminating me was the proper selection.
25		THE COURT: The proper selection.

1	BY MR. CHALENSKI:
2	Q Did he tell you the reasons why you were terminated?
3	A The reason given was he was over staffed.
4	Q Did he tell you any other reasons?
5	A Not in that meeting, no.
6	Q And did he tell you any other reasons at any other
7	meeting?
8	A No, no.
9	MR. CHALENSKI: Thank you, Mr. Hummell.
10	THE COURT: All right. We will recess
11	until tomorrow morning at ten o'clock. Don't talk about
12	the case, and don't let anybody talk about it with you.
13	(Whereupon, the Jury was _xcused.)
14	THE CLERK: Court stands in recess until
15	ten o'clock tomorrow morning.
16	(Whereupon, the proceedings were recessed
17	at 3:15 p.m.)
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1	UNITED STATES DISTRICT COURT			
2	NORTHERN DISTRICT OF NEW YORK			
3		X		
4	UNITED STATES OF AMERICA,	:		
5	Plaintiff	:		
6	-against-	:		NO.
7	JERRY WINSTON, BROOME COUNTY	:	75-CR-83	
8	AVIATION, INC., COMMUTER AIRLINES, INC., and THEODORE (TED) BELL,	:		
9	Defendants	:		
10		X		
11				
12	COMMINIMATION OF PROCE	CDTNO	S 4=	
13	CONTINUATION OF PROCE			
14	above-entitled matter, came on before	e the	United	
15	States District Court, Northern Dist	rict	of New	
16	York, at Auburn, New York, on Tuesda	y, Ju	ne 8,	
17	1976, at 10:00 a.m., before the Hono	rable	Lloyd F.	
18	MacMahon, United States District Jud	ge.		
19				
20	VOLUME VI			
21	,			
22				
23	. /			
24				

- 1	
1	APPEARANCES:
2	The Honorable JAMES M. SULLIVAN, JR.,
3	United States Attorney, Northern District of New York
4	Federal Building, Syracuse, New York, by ARTHUR A.
5	CHALENSKI, ESQ., Assistant United States Attorney,
6	Of Counsel.
7	
8	- and -
9	
10	BECKER, CARD, LEVY & RICHARDS, P.C.,
11	141 Washington Avenue, Endicoto, New York 13760,
12	Attorneys for Defendants Jerry Winston, Broome
13	County Aviation, Inc., and Commuter Airlines, Inc.,
14	by RODNEY A. RICHARDS, ESQ., Of Counsel.
15	
16	- and -
17	PAUL R. SHANAHAN, ESQ., Syracuse,
18	New York, Attorney for Defendant Theodore (Ted)
19	Bell.
20	
21	
22	

1	(Whereupon, the following proceedings
2	took place before the Court, the Jury not being present.)
3	MR. CHALENSKI: The Government moves
4	to dismiss count nine and seventeen of the indictment,
5	and the ninth overt act, namely count one. They are
6	all with reference to Paul Floto.
7	THE COURT: That is nine and seventeen?
8	MR. CHALENSKI: Yes, nine and seventeen.
9	THE COURT: Any objection?
10	MR. RICHARDS: No, sir.
11	THE COURT: There is no dispute here that
12	these carriers are engaged in interstate commerce, and
13	are carriers subject to the Railway Labor Act?
14	MR. RICHARDS: I don't believe so.
15	THE COURT: Mr. Shanahan?
16	MR. SHANAHAN: I agree.
17	MR. CHALENSKI: Those are the two counts
18	referring to Paul Floto, and that is nine and seventeen.
19	THE COUPT: Would it be all right with
20	you Gentlemen if we have a short lunc hour today, and
21	recess a little earlier?
22	The weather forecast is for a very hot
23	day, and the airconditioning here is so noisy that we
24	cannot keep it on while we are working. As you know,
25	we have to recess when we turn it on. So if it is all

1	
1	right with you, we will have a half-hour lunch, and
2	quit at 3:30. Is that all right?
3	MR. CHALENSKI: Yes, Your Honor.
4	MR. RICHARDS: Yes, Your Honor.
5	MR. SHANAHAN: If Your Honor, please,
6	we would like to reverse the order on this witness'
7	examination?
8	THE COURT: All right.
9	JAMES HUMMELL
10	Called as a witness, being previously duly sworn,
11	was further examined and testified as follows:
12	(Whereupon, the following took place
13	before the Court and the Jury.)
14	CROSS EXAMINATION
15	BY MR. SHANAHAN:
16	Q Mr. Hummell, you are presently living in Vermont, did
17	I understand that correctly?
18	A Yes, sir.
19	Q And your home originally is in Jamesville, outside of
20	Syracuse?
21	A Yes, sir. My family resides in Jamesville.
22	Q Now, you have indicated to us that you attended the
23	meeting of the pilots where Mr. Winston and Mr. Bell
24	had spoke, that occurred in the first week of October
25	of 1974, is that correct?

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1 A Yes, sir, I attended two meetings. But you did attend the first meeting? 2 The meeting of October 5th? 3 Yes, October 5th? Q Yes, that is of the co-pilots, the meeting that I A 5 attended. 6 And was that meeting ahead of , or did it follow a 7 0 similar meeting of the captains? 8 It was later. It followed. A 9 It followed the captains' meeting, all right. Now, 10 at that time you were in attendance throughout the entire 11 meeting, were you? 12 Yes, sir, the co-pilots' meeting, yes, sr. A 13 And you indicated to us that since that meeting you had Q 14 an opportunity to hear the tape of the recording of 15 that meeting? 16 Yes, sir. A 17 And when, Mr. Hummell, did you hear that tape? Q 18 I heard it the first day of the trial. That would be A 19 Tunsday. 20 Tuesday of last week? Q 21 A Yes . 22 And that was heard in Auburn, when you heard it? Q 23 Yes, and I have heard it subsequently since then. A 24 Was that the last Tuesday; was that the first time that 25

1		you heard the tape?
2	A	Yes, sir.
3	Q	And I understand it, at the time that you listened to
4		the tape, you had with you your notebook, Exhibit thirty
5		six, and you compared what you-heard on the tape with
6		certain notations that you had made during the meeting,
7		1s that what happened?
8	A	No, sir. I did not use my notes, or I did not have my
9		notes open as I listened to the tape.
10	Q .	Well, I got the impression, from your direct examination,
11		that at some point you compared your notes with what
12		you heard on the tape?
13	A	Not in their entirety , no, sir, I did not.
14	Q	Well, the notes, let's go back to the notes that you
15		made, for a minute, now. Those notes, I assume that
16		you made as the meeting progressed, would that be so?
17	A	Yes, sir.
18	Q	And I presume that those notes were made by you for
19 .		your own information?
20	A	Yes, sir.
21	Q	And you weren't requested by anybody to keep notes?
22	A	No, sir.
23	વ	All right. And at that time that you we a taking the
24		notes, were you aware of the fact that the remarks that
25		were being made at that meeting were being taped?

1	A	No, sir.
2	Q	When did you first learn that they had been taped?
3	A	I believe about two weeks before the trial, but the
4		exact date I am not sure.
5	Q	All right. Now, in your testimony yesterday, I think
6		that you told us that the tape recording that you have
7		listened to last Tuesday, and also since then, did not
8		contain all of the remarks that were made, am I correct
9		about that?
10	Α .	I don't believe it contained every single word that
11		was said.
12	Q	Well, now, in that connection I would like to find out
13		from you exactly what you mean. Do you mean that there
14		was a portion, the last portion of Mr. Winston's remarks
15		that were not recorded, is that what you mean?
16	A	No, I believe that the entirety of, say, the original
17		address, was contained therein. But portions that we
18		didn't hear on the tape was when the meeting was breaking
19		up. The individual conversations after this.
20	Q	Well, that is what I was wondering about. Are you
21		testifying, Mr. Hummell, that all of Mr. Winston's
22		remarks at that meeting of October 5th are on the tape?
23	A	I couldn't say that every single word he said was on
24		that tape, because I don't recall every single word that

he said.

1	Q I don't want to mislead you here. We had some indication
2	that the last portion of his remarks were not on the
3	tape. Do you agree that that is so?
4	A I, as I listened to the tape, I believe that it would
5	be an accurate reproduction of what was said. I thought
6	that what was said was on there.
7	MR. CHALENSKI: The Government will
8	stipulate that the last remarks made by Mr. Winston
9	and the first remarks made by Mr. Bell, were not containe
10	on the tape.
11	MR. SHANAHAN: All right.
12	BY MR. SHANAHAN:
13	Q Now, you heard what Mr. Chalenski said. Do you now
14	agree that all of Mr. Winston's remarks were not containe
15	on the tape, or don't you know?
16	A I do not recall the remarks in their entirety. It was
17	a lengthy meeting.
18	Q I see. In connection with taking the notes, you simply
19	took notes on matters that appealed to you?
20	A Yes, sir.
21	Q To write down what was said, would that be right?
22	A Yes, and what I thought was information for me to recall
23	Q And you were doing it, I assume, Mr. Hummell, gerhaps
24	to use to refresh your recollection at a later time when
25	you were going to decide how you were going to vote

1		for the union, or not vote for the union?
2	A	Yes, sir.
3	Q	Would that be so, all right. Now, Mr. Bell also gave a
4		short talk when Mr. Winston completed his remarks, would
5		that be right?
6	A	Yes, sir.
7	Q	And you heard that, I assume, when the tape was played
8		as well?
9	A	Yes, sir.
10	Q	Now, Mr. Chalenski indicates that the Government concedes
11		that all of Mr. Bell's remarks are not contained on the
12		tape. Let me ask you: do you have any recollection of
13		making any notes on the subject of what Mr. Bell said,
14		as distinguished from what Mr. Winston said?
15	A	No, I don't believe I can refresh my memory, but I
16		don't believe that I wrote anything down about what
17		Mr. Bell said.
18	Q	Well, would it be correct for us to understand that it
19		would be your judgement, after listening to the tapes,
20		that so far as the tapes do cover conversations, those
21		tapes appear to you to be accurate, would that be right?
22	A	They appear to be, yes, sir.
23	Q	Yes. So that when you indicated a few minutes ago
24		that you didn't think that the tapes had every word,
25		was there anything imparticular that you were referring

1		to?
2	A	No, no, there wasn't any particular thing that I was
3		referring to that I thought was omitted.
4	Q	So that so far as the tapes are concerned, you do think
5		that those are accurate and correct as far as they cover
6		the thing?
7	A	Yes, as far as what is on there, I believe that it is
8		accurate and correct.
9	Q	All right. Now, let me ask you: before that co-pilots'
10		meeting of October the 5th, that we have just been
11		talking about, had you attended any union meeting?
12	А	Yes, sir. I attended the very first organizational
13		meeting.
14	Q	That would have been the meeting at the Holiday Inn at
15		Binghamton, or Vestal?
16	A	Yes, sir, Vestal, downtown.
17	Q	And that was the first time that Mr. Calder had appeared
18		on the scene?
19	A	That is the first time that I ever met with Mr. Calder.
20	Q	And you were present throughout that meeting, would
21		that be correct?
22	A	Yes, Sir.
23	Q	Now, between that meeting and this pilots' meeting of
24		October 5th, were there any other union meetings that
25		you attended?

U.S. COURT REPORTERS FEDERAL BUILDING ALBANY, N. Y.

1 A I don't believe so, sir. All right. Now, you also told us of being present at Q 2 a meeting that took place on October the 19th, and was 3 that meeting at the Broome County Airport, and in the Commuter Airlines office, or offices? 5 A Yes, sir. 6 And that was on a Saturday, I think that you told us? 7 Yes, it was a required meeting, and then we had ground 8 A school for the new pilots to follow. 9 I beg your pardon? 10 It was a required meeting, and then we had ground school 11 A to follow it. 12 I see, all right. Now, this was on a Saturda was it? 13 Q Yes, sir, it was. 14 The 19th of October, two weeks after that first meeting; 15 Q two weeks to the day? 16 Yes, after the co-pilots' meeting. 17 Now, during the interval between the first co-pilots' 18 meeting on October the 5th, and this one that we are 19 about to talk about, the one on October the 19th, had 20 you, in the interval, attended any union meeting? 21 I am not sure of the dates of all of the union meetings. 22 A I may have, but I do not know. 23 We are talking now about a two-week interval between 24 Q the first co-pilots' meeting of October 5th, and the

1 second co-pilots' meeting of October 19th. You have no recollection of attending any meetings, union meetings during that interval? I don't distinctly recall attending one, but I may have; 4 I am not sure. 5 Q Now, after October 19th, after this second meeting that you testified about, did you attend any union meetings 7 after that date? Yes, sir. All right. Now, going back to the meeting of October Q 10 the 19th, the one that you have referred to as a meeting 11 was actually a course, or a class, was it not, of ground 12 school instruction, that morning? 13 The first portion of it was a meeting. The second 14 portion distinctly separate, was a ground school. 15 All right. Now, let me ask you with reference to that: Q 16 this first meeting, were you notified to attend that, 17 as a meeting? 18 It was placed in our flight schedule book -- correction, 19 that was a notice in the mailbox, in our mailbox of 20 individual pilots. 21 Are you sure about that? 22 Q This is the meeting of the 5th? 23 No, I am talking about the 19th. 24 Q Oh. the 19th. I am not sure how the -- how we were 25

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1 supposed to be there. 2 Q Let me ask you this. Mr. Hummell: this ground school 3 class, were you a member of that class, were you, if that 4 is the right way to call it; a class? 5 Yes, sir. A 6 And were there other employees of Commuter Airlines also 0 7 participating in that ground school instruction at that 8 time? 9 Two or three. A 10 Two or three. Well, then, let me ask you: how many 11 people were present at the office at the time of this 12 meeting that you refer to as the second meeting, the one 13 of October 19th? I don't know. I don't recall. I didn't count the exact 14 A 15 number. There was in excess of fifteen. In excess of fifteen. Do you recall the names of any 16 Q 17 of them? That would be difficult. No, I wouldn't be able to 18 recall the individuals. I don't think I wrote down who 19 20 was there at that one. And you have no present recollection of any of your 21 Q fellow employees who were attending that ground school? 22 23 Who were attending the ground school? 24 Yes. The ground school portion I could probably name the 25 A

1		people some of the people who were there.
2	Q	Let me ask you first, Mr. Hummell, before we get into
3		that: hadn't the ground school lecture started, and
4		wasn't it interrupted by Mr. Winston, who made some
5		remarks, and then after that, Mr. Winston completed
6		his remarks and didn't the ground school resume, again,
7		following his remarks? Wasn't that the setting?
8	A	I don't believe it had actually started. There may have
9		been some handout materials but we didn't have any
10		instruction.
11	Q	Now, in what room of the building did this ground school
12		instruction take place?
13	A	In the main office area of Commuter Airlines, at the
14		hangar. That is where the meeting portion took place.
15		The ground school portion was separate of that, in a
16	Q	(Interrupting) In a different room?
17	, A	It is not a fully partitioned room. It has a partition
18		that goes three-quarters of the way to the ceiling.
19		In other words, it is open, but a separate area.
20	Q	Do you say that the meeting that did take place, took
21		place in a different area from where the ground school
22		was?
23	A	Yes.
24	Q	Well, if I get this right, the ground school lecture,
25		or class was about to begin, or had begun, and then

1		Mr. Winston came in and made some remarks, is that the
2		way this occurred?
3	A	No.
4	Q	How do you say it occurred?
5	A	Well, when we arrived, and the materials we might
6		have gotten some of our handout material, but we knew
7		the ground school was not going to begin until the
8		meeting had ended.
9	Q	Well, had you been advised in advance, then, that there
10		was to be a meeting that morning?
11	A	Yes.
12	Q	Are you sure about this?
13	A	I am not sure of the wording of the instructions.
14	Q	I am not asking you about wording or instructions. I am
15		asking you were you notified in advance of going there,
16		that there was to be, in fact, a meeting before the
17		ground school class began?
18	A	No, the wording was 'ground school'.
19	Q	I beg your pardon?
20	A	No, I believe the wording that got us there was
21	Q	(Interrupting) It was ground school?
22	A	It was ground school.
23	Q	When you arrived there for the ground school, was Mr.
24		Bell present?
25	A	I believe he came in after I had arrived. I got there

1		fairly early.
2	Q	All right. So he did arrive on the scene. Was there
3		someone else there, also, to participate in the ground
4		school instruction?
5	A	Yes, the other
6	Q	(Interrupting) And who was that?
7	A	In the ground school portion, Mr. Larimore would have been
8		there, and
9	Q	(Interrupting) I am talking now about someone to lecture,
10		along with Mr. Bell, some factory representative, and
11		was there someone there?
12	A	Can I refer to my notes?
13	Q	Surely, if necessary.
14		(The Witness referred to notes.)
15	A	No, sir, at this particular ground school instruction,
16		there was, as I recall it, I don't believe that there
17		was a factory man there.
18	Q	So that the person that gave the ground school instruction
19		would be Mr. Bell, on that day?
20	A	Yes, sir.
21	Q	No one else? No one else participated?
22	А	I am not positive. Mr. Herrington might have added some
23		things.
24	Q	Mr. Herrington, that you speak of, is a Commuter employee?
25	A	Yes.
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1	Q	I am talking about an outsider, and was there any factory
2		representative there, as far as you can recall?
3	A	Not that I recall.
4	Q	Now, did you want to say something?
5	A	There was when you say a factory representative, to
6		speak to us?
7	Q	Yes.
8	A	I don't believe he was there to speak to us. There is
9		a factory representative who has his office in the same
10		room, and he may have been in the building.
11	Q	All right. Now, had the ground school instruction began
12		before Mr. Winston came in?
13	A	I don't believe so.
14	Q	Now, it was about to start. You picked up your material
15		would that be true?
16	A	I believe yes, I believe that there were some handouts.
17		The material was on the table.
18	Q	And this was about what time of the day that we are
19		talking about; morning or afternoon, or what?
20	A	In the a.m.
21	Q	In the morning. But what time, and would you have any
22		judgement or recollection?
23	A	I don't remember the exact time. It would be somewhere
24		in the order of nine to ten o'clock, around there.
25	Q	Nine or ten o'clock, around there, all right. Mr. Winston

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1		did appear, did he not?
2	А	Yes.
3	Q	And did was Mr. Bell present then, and do you say,
4		when Mr. Winston spoke?
5	A	At that second meeting, I don't know where Mr. Bell was
6		standing. He may have been in the room, and he may not
7		have been.
8	Q	I see, all right. And Mr. Winston did make some remarks
9		to the people who were there?
10	A	Yes, sir.
11	Q	Now, the number of people that were there: could you
12		approximate the number that were in attendance when
13		Mr. Winston spoke?
14	A	Yes, I believe I already did Somewheres in excess of
15		fifteen, when Mr. Winston spoke.
16	Q	And would there have been as many as fifteen in this
17		ground school class that morning?
18	A	No, sir.
19	Q	Who were the additional ones that came?
20	A	Other pilot employees.
21	Q	And do you recall who they were?
22	A	I couldn't name individuals, sir.
23	Q	Could you tell us the ones that were members of the
24		ground school class?
25		I helieve, ves. I can name some of those.

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1	Q	Would you, please.
2	A	Mr. Larimore, Mr. Hugh McDougald, and I think perhaps
3		Mr. Ivar Ore. I am not positive of that last one, but
4		the first ones
5	Q	(Interrupting) Anyone else that you think of readily?
6	A	No, not readily. There was not a big group.
7	Q	Now, when Mr. Winston spoke on that occasion, you
8		apparently took notes, again?
9	A	Yes, sir, on the 19th.
10	Q	Yes?
11	A	Yes, sir.
12	Q	And during the course of your direct examination, you
13		referred to those notes to assist you in refreshing your
14		recollection, would that he so?
15	A	Yes, sir.
16	Q	And then, about how long did Mr. Winston speak on that
17		occasion, if you can tell us?
18	A	Not really long. Twenty minutes, or maybe thirty minutes
19	Q	About twenty minutes. When he completed the remarks
20		that he made, did anyone else speak as part of this
21		same program, or arrangement?
22	A	We are still discussing the 19th?
23	2	Yes, we are still talking about the 19th.
24	A	I am not sure if anyone else spoke, sir.
25	Q	And then what happened; did the class start?

1 A Not immediately. Q Well, was there a lapse, then, between Mr. Winston's 2 remarks and the start of the class? 3 Yes, sir. A 4 About how long would you say? Q 5 Ten or fifteen minutes. A And then the class started? 7 Yes, sir. 8 Q And the lecture, or whatever the class amounted to. 9 followed from that point? 10 Yes, sir. 11 Would that be right? Q 12 Yes, sir. 13 A Okay. Now, the notes that you made in connection with 14 that were the remarks that Mr. Winston made on that 15 day, and I take it were notes that you made on your own, 16 would that be correct? 17 Yes, sir. 18 A You weren't requested by anyone to make notes? Q 19 No, sir. 20 A And you made notes of only such things that appealed to 21 Q you as being worthy of your jotting down? 22 Yes, sir. 23 A

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way that you went at that?

And perhaps to review at a later time, would that be the

- 1 A Yes, sir.
- 2 | Q Now, then, you have told us that after a lapse of
- some ten or fifteen minutes, perhaps, the ground school
- 4 class started?
- 5 A Yes, sir.
- 6 Q And in connection with that ground school class, did you
- also take notes with reference to what occurred at that
- time?
- 9 A Yes, sir.
- 10 Q And that class, as a class, continued for how long that
- 11 morning?
- 12 A An hour and a half or two hours, maybe.
- 13 Q An hour and a half or two hours?
- 14 A Yes.
- 15 Q And so that the class was completed, then, about noontime
- or thereabouts?
- 17 A After lunchtime, I believe.
- 18 Q After lunch?
- 19 A We didn't break until -- I am not sure if we did break
- and come back. I can probably tell you.
- 21 Q Apparently -- pardon me, go ahead.
- 22 A Sometime: I write down if we break and come back.
- I, believe it w done in all one session.
- 24 Q I beg your pardon?
- 25 A I believe that the instruction was done in all one

1		session.
2	Q	And it was completed sometime around noon or perhaps
3		shortly after noon, would that be so?
4	A	I believe so.
5	Q	Now, was that the last ground school course that you
6		attended?
7	A	No, sir.
8	Q	There were other classes or courses following that?
9	A	Yes, sir.
10	Q	And did you tell me that there were, in fact, other
11		union meetings that you did attend after the date of
12		October 19th?
13	A	Yes, sir.
14	Q	Now, would it be correct, Mr. Hummell, that your notebook
15		follows this order: that generally there is notations
16		of instructions that you received, covering a number of
17		pages: then you come to the meeting of October the 5th;
18		there are some pages that cover the notes that you made
19		at that meeting, would that be right?
20	A	Yes, sir.
21	Q	And then immeddately following the notes referring to
22		the meeting of October the 5th are the notes of October
23		19th, that meeting?
24	A	Chronologically in order in home, yes.
25	Q	That is what I am talking about. So that the notes of

1 the October 19th meeting in your notebook, follow 2 immediately the notes that you made of the October 5th 3 meeting, correct? Yes, but he meeting notes of the 19th were not taken 5 in this notebook. They were inserted into this notebook 6 Q They were inserted into that notebook, weren't they? 7 Yes, sir. And they weren't taken with the use of that notabook 9 that you are holding in your hand? 10 No, sir. They were taken in this notebook. 11 All right. Just so that the Jury can follow you: your 12 notes that deal with the October 5th, 1974 meeting are 13 dated October 5th, 1974, and they are labeled 'Company 14 Meeting, ' correct? 15 Yes, sir. 16 And then following that heading, and for the next three 17 pages, are your notes that relate to the October 5th 18 meeting, correct? 19 Yes, sir. 20 Now then, immediately following that is a heading 21 'October 19th' and the heading goes on 'Union Message: 22 Golden West -- West Coast, Five companies went together 23 two and a half years lost \$18 million dollars,' is 24 that correct? 25 Yes, sir.

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1	Q	Now, those are the opening notes that you made with
2		reference to the meetir . October the 19th?
3	À	Yes, sir,
4	Q	Would that be so. And then the balance of that page,
5		over onto the next page no, just the balance of this
6		page refers to the meeting of October the 19th, would
7		that be right?
8	A	Yes, sir.
9	Q	And then on the reverse side of that, are some class
10		notes, apparently?
11	A	Yes, sir.
12	Q	Also dated October 19th?
13	A	Yes, sir.
14	Q	And then those class notes continue for a couple of
15		pages?
16	A	Yes, sir.
17	Q	Over onto the page that I am holding here that is the
18		second page that is filled out in the notebook, and
19		the heading of that second last page is again, 'October
20		19th, 1974, would that be right?
21	A	Yes, sir.
22	Q	Now, the paper upon which these notes of this October
23		19th meeting are written, of course are not the same
24		sized paper that is otherwise contained in the noterook,
25		that is correct, isn't it?

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FEDERAL BUILDING
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ì	A	Yes, sir.
2	Q	And so what you are telling me is that the notes of this
3		what you referred to as your notes about the October
4		19th meeting you took actually in another notebook,
5		would that be correct?
6	A	Yes, sir.
7	Q	And then removed from the other notebook, and put it in
8		the binding of this notebook?
9	A	Yes, sir.
10	Q .	Is that what you did?
11	A	Un-huh.
12	Q -	When did you do all of that?
13	A	When I got that notebook back from the person I loaned
14		it to.
15	Q	Well, that doesn't mean very much to us. You are talking
16		now about the notebook, Exhibit thirty-six for identifi-
17		cation?
18	A	Yes, sir.
19	Q	And I gather from your answer that at some point or other
20		you loaned this to someone?
21	A	Yes, sir.
22	Q	And then you got it back?
23	A	Yes, sir.
24	Q	When did you get it back?
25	A	Somewheres around the 24th, in there somewhere.
	1.	

The 24th of what? 0 1 10/24. of 1974? 3 Yes, sir. So now you got it back, the notebook back on October 24th, 1974. Now, do I understand that you removed some pages from another notebook and put them in the binding of this notebook? Yes, sir. It was a practice that I learned at college. 9 And taking the center page, this is the binding, would 10 that be correct (indicating)? 11 Yes, sir. A So did you remove then the binding that was originally Q 13 in this notebook and put a new binding in, is that the 14 way that you accomplished this? 15 No, not the whole new material. 16 Just certain pages? Q I just put in the pages. 18 Yes. 19 And covered that date, when I didn't have the notebook, A 20 and then I put it back into the notebook so that it 21 would all be in one binder. 22 I see, all right, And you did that on October 24th of Q 23

I am not sure of the exact date that I did that.

1974?

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1 Q Well, it was about that date, was it? Somewhere in there. I am not sure of the exact date. 2 3 It was about that date. I see. Well, let me ask you this: in addition to that, there are evidence of pages that have been cut out, 5 6 isn't that so? 7 That is how I inserted those pages, sir. Q By cutting out other pages with a knife apparently? 9 Blank pages, yes, sir. 10 Well, they weren't blank pages, because there was some Q 11 writing that is still noticeable in the remaining 12 portion of the cut pages, isn't that so? In the margins, yes, sir. There was nothing on them --13 14 that was the chronological order, and that is why I 15 put them in there. When you say there was nothing on them, you could see 16 17 in the remaining portion of the cut page that is immediately in front of this, or these notes that deal 18 with October 19th, you an see some indication of 19 writing in the margin, isn't that right? 20 21 Yes, sir. And you agree, I take it, from the way that you have 22 answered me up to this point, that these pages deal 23

sized pages as the rest of the notebook, correct?

with the October 19th meeting are not even the same

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1 A They are not the same paper, no. sir. Q Different color, and everything, right? 2 A Yes, sir. 3 Q Now, then, following some of the notes that you say are your ground school notes, there is generally an 5 area where a sheet has been cut out, would that be so? 6 A That is the last page of the ground school notes. 7 Q That is the last page of the ground school notes that were cut out? 9 No, not that were cut out. That was inserted in there, A 10 and yes, I cut it out, as many pages as I needed edges 11 to insert the pages covering the ground school. 12 And our purpose was to have all of your notes together 13 hat relate to Commuter Airlines? 14 A Yes, sir, to get --15 (Interrupting) Did you have any ground school training Q 16 after this meeting of October 19th? 17 I believe we might have had a slide program after that. 18 Did you take notes on that program? Q 19 I am not sure. I would have to look for dates and times 20 Well, there is no other notes in that notebook, is there Q 21 or is there? 22 Yes. There is a 10/26 note and there is a 11/2. 23 What is the 10/26 note? 24 2

About an engine.

- 1 Q And the 11/2 note? Control systems, basically conventional, and the S.A.S. A 2 systems, and that refers to the other one. And does that notebook contain everything that occurred 5 about your employment with Commuter Airlines where you took notes? 6 7 A Not everything I don't believe, sir. 8 Q Well, I thought that your purpose in inserting pages from another notebook into this notebook was to put 9 all of the information that dealt with Commuter in one 10 notebook? 11 A The previous, yes, sir. I may have misunderstood your 12 question. You asked, does it contain everything that 13 I ever took notes on at Commuter. It does, except for 14 some loose material which I think is in the back of 15 that, which was also a ground school, the very first 16 day we started work. That is not it. It is other 17 material. That is not it, either (indicating). 18 Is this it (Indicating)? I had better get up there Q 19 where you can see it? 20
- Yes, there is some loose notes. 21 A

- Well, now -- and is this, whatever it is? 22 0
- Yes, sir. That was ground school information from the 23 A first day of instruction. 24
 - Well, now, to go back, did I understand you correctly Q

1		that your purpose in rebinding this notebook and
2		including some information from another notebook was
3		for the purpose of getting all of your notes that related
4		to employment at Commuter Airlines into one notebook,
5		was that your reasoning?
6	A	That was my reason, to get this material in one area.
7	Q	So does this notebook, Exhibit thirty-six, then, contain
8		all of the notes that you had occasion to take, in
9		connection with your employment at Commuter?
10	A	I am not sure if it contains all of it. I had, as I
11		showed you there, I had taken some notes on some loose
12		material when I did not have my notebook available, and
13		some of that might be missing. I don't know.
14	Q	How about your classes? Does this contain all of your
15		notes from classes?
16	A	I am not sure of that.
17	વ	And your purpose was to get them all together, wasn't
18		it?
19	A	All that I knew of.
20	Q	Well, these union meetings that you attended, you
21		apparently took no notes of those?
22	A	There is a very brief note in there taken at the union
23		meeting.
24	Q	Would you show it to me, please?
25	۸	This is a section dated the 24th 10/24/74.

1	Q	Yes? And that has to do with voting rights?
2	A	Yes, sir.
3	Q	And a series of what might be initials thereafter?
4	A	Yes, sir.
5	Q	I see. Well, now apart from that, that portion of that
6		exhibit which is at the most a paragraph, some four or
7		five lines, would that be right?
8	A	Yes, sir.
9	Q	Did you take any other notes with reference to what
10		may have been said at various union meetings that you
11		attended?
12	A	No, I did not take very extensive notes on union
13		meetings.
14	Q	Well, did you take any?
15	А	Yes, I took these.
16	Q	Apart from that?
17	A	I may have on loose paper handouts that they gave out
18		They gave out numerous handouts.
19	Q	Did you rewrite those in your notebook, or rebind them
20		into the notebook as you did this other material?
21	A	Well, I have them in a separate container, containing
22		all of my union information.
23	Q	Now, this is this other notebook that you are holding
24		in your lap as you are sitting here now, is that the
25		notebook in which you did make the entries relating to

1		the meeting of October 19th?
2	A	I believe that is it, sir, yes.
3	Q	Could I look at that for a minute, please?
4	A	Yes (Offering).
5		THE CLERK: Defendant's Exhibit K, marked
6		for identification.
7		(Document marked Defendant Exhibit K for
8		identification.)
9	BY I	MR. SH A. N:
10	Q	Then, the other notebook that you had been speaking about
11		is Exhibit K, now marked for identification, would that
12		be right?
13	A	Yes, sir.
14	Q	All right. Now, would you open that anywhere, and compare
15		now the paper on which you made, you say, the notes of
16		the meeting of October 19th?
17	A	Yes.
18	Q	With the paper in that exhibit?
19	A	Yes, sir.
20	Q	And that is not the same paper, again, is it?
21	A	I am not sure, sir. I guess well, it looks like it
22		comes close. I own about five of these. I am not
23		certain that it came out of this one. I believe it is.
24	Q	Well, in order to get it out of there, you would have
25		had to open the binding on that notebook, if that is

1 where it came from, to remove some sheets, and then remove the binding on this notebook, Exhibit thirty-six, 2 to insert them, wouldn't that be right? 3 A No. sir. You simply take a razor blade and cut them out. 5 Q Well, do you mean that this sheet containing your notes 6 of the meeting of October 19th has been razor-bladed 7 out of another notebook, is that what you are telling 8 me? 9 Yes, sir. 10 And how do you insert it then into this notebook? 11 You razor-blade out an equal number of pages out of that 12 notebook that are being used or are blank, to give you 13 just a little bit of a lip to tape on, and then you take 14 the pages that you want to put in there, and you tape 15 them in with magic mending tape. 16 You mean that this page that I called to your attention 17 that had been taken out, that is what is holding the 18 page in? 19 Yes, sir. 20 Oh, I see. Now, what was on that page that you razor-21 bladed out of this exhibit thirty-six? 22 I do not know, sir. 23 Well, you can see some notations in the upper part of 24 that edge of that? 25

1	A	Yes, sir.
2	Q	That show that it has been removed?
3	A	Yes, it loomed to be the beginning of a date, but I
4		don't know what it was or what it concerned.
5	Q	Then, on the following full page, we have got another
6		situation, apparently?
?	A	Yes, sir.
3	Q	Of notes, also dated 10/19 and that would have been
9		have these been fastened to another page in the same
10		fashion?
11	A	I believe that all of the pages with that date on were
12		inserted in that manner.
13	Q	Now, to go back, do you say that the pages that were
14		removed from some other book came from this second note-
15		book now marked Exhibit K for identification?
16	A	I am not positive that they were, sir. No I thought
17	0	that this was the one that it came from, but I have
18	16	several other ones just like it.
19	Q	What was the reason for bringing this one with you,
20		Exhibit K for identification?
21	A	Because I had done the same thing in here with another,
22		on another occasion. It is not uncommon for me to do
23		that.
24	Q	Well, now, did you testify, Mr. Hummell, before the
25		Grand Jusy?

1	A	No, sir.
	Q	This is the first time that you appeared to give any
2	•	
3		testimony with reference to this matter, as a witness?
4	A	Yes, sir.
5	Q	And when did you produce, in connection with this case,
6		this notebook, Exhibit thirty-six? When did you first
7		produce this?
8	A	To whom, sir?
9	Q	To anybody?
10	A	I brought it to the attention of, I believe, Mr
11		well, I went down to Syracuse to the Federal office.
12	Q	Did you talk to somebody there?
13	A	Yes.
14	ର	And what is that person that you called
15	A	(Interrupting) The attention of this to ?
16	Q	Yes.
17	A	The fact that I had taken notes?
18	Q	What was the name of that person?
19	A	I believe it was Mr. Chalenski, I believe.
20	Q	Mr. Chalenski. When was this, approximately?
21	A	I believe it was after the indictments were issued, so
22		that would be approximately somewhere in there.
23	Q	That would have been sometime after June or July of
24		last year, and I think that that would be approximately

when the indictment was made?

25

- A Yes, sir.
- 2 Q And did you go there at his request and bring the note-3 book at his request?
- 4 A No, sir.
- Now, as I understand your testimony, Mr. Bell, on

 October 19th, made no remarks to those that were

 assembled at the time of that occasion, other than to

 give his flight school instruction? Would that be right?
- 9 A I don't recall any remarks. I didn't say that he didn't 10 make any.
- 11 Q Well, then, you are not saying that he did?
- 12 A I am not sure.
- And now then, I take it that you said that you were -your employment was terminated on what date was it,
 again? It was February, what?
- 16 A The 19th.
- 17 Q February 19th. And I think that you said that the
 18 conversation on that subject ook place in Mr. Winston's
 19 office?
- 20 A Yes, sir.
- 21 Q And Mr. Bell was present?

- ...

- 22 A Yes, sir.
- 23 Q And I think that you said that Mr. Winston was in and out of the office?
- 25 A Yes, sir.

Q Would that be so. Is that the same area where these 1 classes were held at other times, or is this a private 2 office now? 3 It is a private office. That one is partitioned to the A 4 roof. 5 And I take it that the way that you expressed yourself Q 6 yesterday, that on that occasion, Mr. Bell didn't make 7 any entries, and he didn't say anything, is that right? 8 Not more than to say that we are ready to see you now, A 9 and when it was over, to say it was over. 10 I beg your pardon? Q 11 He had me come into the office. A 12 Q Yes? 13 And I believe that that was probably the only thing A 14 that he said. 15 Did he remain there throughout your conversation with Q 16 Mr. Winston? 17 Yes, sir. A 18 But the conversation was between you and Mr. Winston? Q 19 Yes, sir. A 20 And as I understand your testimony, Mr. Bell did not Q 21 participate in that conversation, so far as you can 22 recall? 23 Not that I can recall, sir. 24 f. All right. And that occasion, of course, terminated Q 25

1 your connection with Commuter Airlines, would that be 2 right? Yes, sir. 3 MR. SHANAHAN: I think that is all that 5 I have. 6 BY MR. RICHARDS: 7 Mr. Hummell, when you were hired by Commuter Airlines, were you interviewed by Ted Bell? Yes, sir. A 10 And your date of employment with Commuter was July --11 the early part of July of 1974, is that correct? 12 July 1. 13 Was your own conference or employment with Ted Bell, or 14 did you also see Jerry Winston? 15 You mean pre-employment? 16 Yes. 17 No. I believe it was just -- just with Mr. Bell. 18 Q Now, before you were hired by Commuter, for whom did 19 you work? For Emor-Aero, in Skaneateles, which is the same people 20 A 21 as Sayer from Syracuse. And were you a pilot for that other company? 22 23 Yes, sir. Now, at the time that you were hired by Commuter, how 24 25 many hours of multi-engine time did you have?

1 A Very few, sir. Probably on the order of forty. I am 2 not certain, but I do have my log book here and if the exact number is important we can find it out? 3 Q 4 Let me ask you this: do you recall Mr. Bell indicating 5 to you that it was company policy for all co-pilots. and pilots, of course, to have at least a minimum of 6 7 one hundred hours of multi-engine time? 8 I don't believe it was company policy, sir. I believe it was I.B.M. policy. 9 And in any event, it was a policy followed by the 10 Q 11 company? A It was originally indicated. 12 And this is indicated to you by Mr. Bell at that time? 13 Q Yes. Now, wait a minute. Let me correct myself -- a 14 A minute? It couldn't have been policy because they 15 hired me with less than one hundred. 16 Exactly. And then after you were hired what duty were 17 Q 18 you assigned to? Well, we began class, and I rode observation flights, A 19 and I also flew the mail. 20 When you say you 'rode observation flights,' were you Q 21 actually flying in the right hand seat of the mail 22 23 route? That was not the observation flights. 24 A Well, was that part of your duty to fly co-pilot for the 25

1		mail route?
2	A	Yes, sir.
3	Q	And was it customary for Commuter to have two pilots
4		on their mail route; a pilot and a co-pilot?
5	A	It varied. Sometimes they did, and sometimes they
6		didn't.
7	Q	Isn't it a fact that Commuter used only a pilot on its
8		mail routes?
9	A	They have what is known as a single pilot authorization,
10		and with an auto-pilot. If the auto-pilot is not
11		functioning, then they must have two pilots.
12	Q	And isn't it a further fact that you were given a co-
13		pilot's slot on the mail route for purposes of building
14		up your multi-engine time?
15	A	Yes, sir.
16	Q	And that was discussed with Mr. Bell at the time of
17		your employment?
18	A	Yes.
19	Q	And this was done so that you would be qualified to fly
20		co-pilot for Commuter, isn't that correct?
21	A	Could you word that different qualified to fly co-
22		pilot?
23	Q	Yes.
24	A	If that means do you mean to accumulate one hundred
25		hours?

1	Q	Well, yes.
2	A	I flew co-pilot for Commuter before having one hundred
3		hours of multi-engine time.
4	Q	Since the date of your employment, when did you first
5		fly co-pilot for Commuter on a charter or scheduled
6		run?
7	A	May I refer to my log book?
8	Q	Please do.
9	A	A charter on the 15th, and that would be fifteen days
10		after employment.
11	Q	And you flew co-pilot on a charter?
12	А	Yes, sir.
13	Q	And does it identify the aircraft that you used?
14	A	Yes, sir.
15	Q	And what was the aircraft?
16	A	It was a Piper Navajo.
17	Q	A Piper Navajo?
18	A	Yes, sir.
19	Q	Is that a multi-engine aircraft?
20	A	Yes, sir.
21	Q	What was the next time who was the pilot on that
22		flight?

U.S. COURT REPORTERS FEDERAL BUILDING ALBANY, N. Y.

Ted Bell. And when was the next time that you flew

The Captain was Mr. Ted Bell.

co-pilot for Commuter, after that?

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- 1 I flew a charter on the 18th. A Again, who was the Captain? 2 I don't have the Captain noted. 3 And what type of aircraft were you using? Once again it was a Navajo. A 5 All right. Now, referring to the meeting of October 19th, 6 1974, as I understand it, Mr. Winston came in and spoke with a group of pilots who were in the ground school training for the Metro aircraft, is that correct? 9 The meeting of the 19th? 10 Q Yes. 11 Yes, sir. 12 The meeting of the 19th? 13 14 Yes, sir. And is it your testimony that Mr. Winston spoke for 15 approximately fifteen to twenty minutes? 16 Yes. I am not sure of the time, but it was not a length 17 dissertation. 18 Now, do you recall at this meeting, or do your notes 19 help you refresh your recollection at the outset that 20 Mr. Winston discussed a Reader's Digest article? 21
- 23 Q Yes.

22

A I don't recall that, and the notes of that meeting are on the desk, if you are going to ask me questions.

At the 19th meeting?

1 Q Would it help you --(Interrupting) Please. A 2 (The Exhibit was offered to the Witness.) 3 THE WITNESS: Thank you. 4 BY MR. RICHARDS: 5 Would you check your notes and see if the first subject 6 Q discussed by Mr. Winston, at that meeting, was a 7 Reader's Digest article? 8 I do not recall that, and I do not note it in my book. 9 I am sorry? 10 I do not recall that, that it was discussed, and I do 11 not have anything in my notes to indicate that it was. 12 Do you recall Mr. Winston discussing, at that meeting, Q 13 the retirement of Hank Excell? 14 I recall that retirement being discussed, but I am not 15 A certain if it was then. 16 Well, would you again refer to your notes, and see if Q 17 you don't have some notes about \$12,000.00? 18 I have nothing in the notes of that meeting, reflecting A 19 upon that. 20 Don't you have some notes with a figure of \$12,000.00 Q 21 noted in there? 22 On the 19th, sir? 23 A 24 Q Yes. 25 I don't believe so, sir.

1	Q Now, this is the first page that I am showing you now
2	of October 19th, that meeting?
3	A Yes, sir.
4	Q Well, in any event, then, you don't recall any discussion
5	regarding retirement of Hank Excell, is that correct?
6	A I don't recall a discussion about the retirement of
7	Mr. Excell. I am not sure it was at that time.
8	Q All right. Do you recall any discussion by Mr. Winston
9	regarding the early death of Burt Melstrum?
10	A Yes, sir.
11	And do you recall his discussion regarding the company
12	benefits paid to his family, by reason of his death?
13	A I believe so, yes. I may have a note on that.
14	Q Do you have a note in your book there on that discussion?
15	A I may have, yes. I will refer to my notes.
16	Q Will you check it, please?
17	(The Witness referred to the Exhibit.)
18	THE CLERK: Defendant's Exhibit L, marked
19	for identification.
20	(Document marked Defendant's Exhibit L
21	for identification.)
22	THE WITNESS: No, sir, I do not have a
23	note on this. I do recall some discussion of that.
24	BY MR. RICHARDS:
25	Q Do you recall if this discussion took place on October

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1		19th?
2	A	I am not sure if that was when it was mentioned, but it
3		was at one of the meetings. I am not sure which one.
4	Q _	Now, I gathered from your direct testimony that at this
5		meeting, Winston indicated that the Golden West contract
6		was an economic disaster, and did I hear you correctly?
7	A	That was the meeting of the 19th, yes, sir.
8	Q	Yes. I am talking about the meeting of the 19th?
9	A	Allright.
10	Q	And that he further said to you that before he signed
11		such a contract he would close the doors of the company,
12		is that what you testified to on direct?
13	A	Yes, sir.
14	Q	Now, I show you Defendant's Exhibit L, marked for
15		identification, and ask you if this particular booklet
16		was exhibited to you at this meeting (Offering)?
17	A	No, I have never examined or seen one of these before.
18	Q	In other words, you did not see that booklet in Mr.
19		Winston's hand at this meeting?
20	A	No, I have never seen that before.
21	Q	But in any event, you do have a recollection of Mr. Winsto
22		referring to the Golden West contract?
23	A	Yes, sir.
24	Q	And also you recall that he indicated that any contract
25	1.	ad mad by him would be an economic disputer to Commuter

1		1s that correct?
2	A	I believe that the indication was that he would not sign
3		a contract similar to the Golden West contract.
4	Q	Right. And he further indicated at that meeting that
5		if such a contract were in effect at Commuter, that
6		these benefits, these benefits that he earlier described
7		were paid to the family of Melstrum, would no longer
8		be available to a pilot, isn't that what he said?
9	A	I am not sure if the discussion of Mr. Melstrum's death
10		and survivors benefits was at the same time or not.
11	Q	Well, would it be fair to say that Mr. Winston discussed
12		with you at this meeting, some of the materials contained
13		in Defendant's Exhibit L for this Golden West contract?
14	A	No, I don't recall any discussion of the terms. It was
15		a very brief mention of the contract.
16	Q	Well, perhaps terms is the wrong term. He discussed
17		generally what is being required of the employer in the
18		Golden West contract. Do you recall him saying anything
19		like that?
20	A	No, I do not.
21	Q	Well, do you recall him saying that if I withdraw the
22		question. Do you remember Mr. Winston indicating to you
23		at this meeting that he would pull in his horns, I
24		think was the expression used by you?
25	A	Yes, sir.

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And in effect, what he was saying or he was saying that Q 1 if he had to sign a contract like this, that he would 2 pull in his horns? 3 No, that refers to pulling in his horns and that was A not made in direct connection with the Golden West 5 contract. 6 WEll, when he indicated that he would fly more profitable 7 routes, did he indicate that by reason if he had to sign 8 a contract like this, that he would cut back on his 9 non-profitable routes? 10 No, sir. Once again, there was no reference or direct A 11 connection with the signing of the contract, and these 12 other alternatives. 13 What about the cutbacks of the co-pilots staff? Wasn't Q 14 that in reference to any contract required to be signed 15 by Commuter? 16 A No, sir, these were alternatives. 17 Q When you say they were alternatives, are you saying 18 that they were alternatives that he would be faced with 19 in the event that he was required to sign such a contract? 20 There was no direct -- there was no direct tying together A 21 of these different alternatives with the event of a 22 contract or no contract. 23 Q 24 Well, your recollection is that he mentioned this contract, isn't that correct, the Golden West contract? 25

1 A Yes, he mentioned the Golden West contract. And he mentioned it several times, isn't that correct? 2 I believe so, to the test of my recollection he only 3 mentioned it in the every early opening statement. Well, as a matter of fact you had in your notes, the 5 Q figure \$18 million loss, don't you? 6 A Yes, And wasn't that in reference to the Golden West contract 9 Yes, it was. And didn't Mr. Winston indicate, at that time, that there 10 were five separate companies who ultimately merged, on 11 12 the west coast? 13 Yes, sir. 14 And didn't he indicate that following their merger that 15 the Teamsters organized three categories of employees; 16 the pilots, the mechanics, the line crew, and do you 17 recall him saying that? 18 I don't recall that he said that. And ever since the Teamsters had organized that merged 19 20 company that it had lost that money, and don't you recall 21 him saying that? 22 He made mention about the loss of \$18 million dollars. 23 but I don't know --24 (Interrupting) But you don't know to what reference 25 that was being made?

- 1 A Yes, sir. Q But you do recall a discussion regarding how the Golden 2 West or Commuter Airlines was formed by the merger of 3 4 several companies? A Yes, sir. 5 Now, you further heard him say at that meeting, didn't 6 you, that he, himself, could become qualified to fly 7 8 the Metros? Yes, sir, that was made mention of once. I am not 9 A certain of the time. 10 All right. Now, you earlier indicated, I believe on Q 11 your direct, as you were being paid fifty cents an hour 12 for waiting time, and was that your testimony? 13 That was one of the figures for waiting time. But I am 14 not sure of the details. It has been a long time. 15 As a matter of fact, that fifty cents really was over 16 Q and above your base and incentive pay, isn't it? 17 Yes, sir. 18 And in fact, that fifty cents an hour is really the Q 19 additional monies paid to you in the event, on a charter 20 that you are held over in the city for several hours, 21
 - A There was always paid waiting time on the Commuter segment of the operation.

and you are paid an additional fifty cents?

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23

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25 Q Yes, yes. Now, if I understand you, you attended severa

union organizational meetings, is that correct? 1 A Yes, sir. 2 And was there any discussion at these meetings, at any 3 time, about ways in which the union or the employees 4 could cost the company more money? 5 A Yes, sir. Q And do you recall the approximate -- I will withdraw that question. How many meetings did this subject matter 8 come up at for discussion? 9 As I recall -- I can only recall one time. 10 And do you recall when that meeting was held? 11 I am not certain of the date. I know where it was held. 12 In the Pen-View Apartments, and it might have been the 13 meeting of the 24th, but I am not certain. 14 Q All right. This is October 24th? 15 I believe, but again, I am not certain of the date. 16 There were many, and several meetings. 17 Q And what was said at this meeting concerning ways to 18 cost the company money? 19 Well, it was in a -- in a retaliatory frame. Some more 20 people had been dismissed, and pilots were mad, and 21 were talking about or discussed briefly, ways to get back at Mr. Winston. 23 And was more than one way being considered by this Q 24 group at that time? 25

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1	A	I only recall two, yes, more than one.
2	Q	Would you identify one way which was discussed at that
3		time?
4	A	One way was discussed was the flying of the Marlin at
5		a lower altitude in the route structure than normal.
6	Q	And what effect, if any, would that have on the aircraft
7	Α	Well, under the original discussion it was thought that
8		that would burn more fuel, but as we asked the more
9		senior pilots, we discovered that that was not so.
10	Q	And what was the other way discussed at this time?
11	A	To run the piston reciprocal type airplanes at a
12		MR. SHANAHAN: (Interrupting) What was
13		that?
14		THE WITNESS: Reciprocal piston airplanes
15	BY M	R. RICHARDS:
16	Q	What is that word?
17	A	Reciprocal, at a higher or more rich mixture setting,
18		which would also consume more gasoline.
19	Q	Well, what effect would that have on the aircraft?
20	A	Other than now, I am not a mechanic and I am not
21		an expert. The engine would run slightly cooler, and
22		it would burn more gas.
23	Q	Were these the only two topics discussed at that meeting
24		regarding costing the company more money?
25	A	They were the only ones that I recall, sir.

1 Q Was that the only meeting ; which these topics were 2 discussed? A The only one that I remember that they were discussed. 3 Q You don't recall any discussion about ways of burning 4 5 up cylinders? 6 A No, sir. 7 Q Or any discussion about the tires and using the brakes 8 too frequently? 9 A No. sir. 10 Or any discussion regarding use of unauthorized runways Q 11 in the metropolitan airports? 12 A No, sir. Was there any discussion about a slow down or work 13 Q 14 stoppage to cost the company money? There was, at one time. 15 A That would be a third one that was discussed, to your Q 16 recollection? 17 I am not sure it took place at the same time, sir. 18 A Well, let me ask you this: did you attend union meetings 19 20 in the Spring of 1975, as well? 21 Yes, sir. A And did you attend these meetings even after you were 22 23 discharged? 24 Yes, sir. A And at these meetings, was there any discussion about 25

1		ways in which you could cost the company money?
2	A	The only thing I recall is the discussion of the
3		discussion concerning the fuel, and also the discussion
4		of a work stoppage.
5	Q	All right. Did anyone ever speak to you regarding your
6		non-availability on weekends?
7	A	I was non-availability on weekends? No. Not that
8		I recall.
9	Q	Do you recall them speaking to you about your late
10 _		arrival for a flight, or counter duties?
11	A	Yes, sir. I was
12	Q	(Interrupting) Do you recall who spoke to you regarding
13		this matter?
14	A	Yes, sir.
15	Q	And who was that?
16	A	Mrs. Irene Winston, and Mr. Winston. I was asked to go
17		to the office.
18	ବ	And when was this?
19	A	I would say in November November or December, I am not
20		certain.
21	ବ	All right. Did this discussion concerning the fact that
22		you were late for counter duties happen on one occasion?
23	A	It concerned the fact that they indicated I was late,
24		and I pointed out to them that I was not.
25	Q	Now, were there any other occasions when someone spoke

1 to you regarding late arrival for counter duty? 2 Not that I recall. Now, what were the reasons given to you by Mr. Winston 3 at the time that you were discharged? 4 The principle reason in the discussion in the conversation 5 during my discharge was the company was over staffed. 6 0 Did you say anything in response to that? 8 Yes, sir. 9 And what did you say? I believe what I told -- I had had a couple of days to 10 11 prepare my thoughts on this, because I knew I was zoing 12 to get it. I told them that as far as I was concerned 13 that they only reason that I was being singled out to be dismissed at this time was my supposed or my active 14 15 my active role in the union activities. Did you also tell him at the close of that meeting that, 16 17 'I will get you somehow'? 18 No. that wasn't the way I worded it, sir. I believe in the direct -- the other portion of that statement was 19 20 that I indicated that no matter how long and lengthy and 21 drawn out the legal procedures were involved, to see this 22 dispute to an end, that I would pursue this to its end. 23 Did I understand your answer to Mr. Shanahan's question 24 and you indicated that following the meeting of October 25 19th -- in the notebook into which you had taken your

î notes, was turned over to someone, is that correct? 2 No, it is not correct. That is not when it was turned A 3 over to someone. It was not turned over to someone? 0 5 A Not at that time. That is, not following the meeting of the 19th. 7 Q Following the meeting of the 19th, you turned the notebook 8 over to someone, is that correct? 9 A No, sir. 10 Did you ever turn the notebook over to anyone? 11 A Yes. 12 When? 13 Following the first meeting, the co-pilots' meeting of A 14 the 5th. 15 You turned your notebook over to someone? Q 16 Yes. 17 Do you recall when you turned it over? Q 18 The exact date, no. I know who had it. 19 Was it within a week or two? Q 20 Yes, sir. 21 And to whom did you turn it over? 22 Mr. Ira Josephson. A 23 All right. Had he requested you -- requested the 24 notebook from you? 25 Yes, sir. A

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1	Q	And was it later returned to you?
2	A	Yes, sir.
3	Q	Do you recall approximately when it was returned to you?
4	A	Approximately, but I am not sure. Sometime after the
5		19th, because I did not have it in my possession to take
6		the notes in at the day of that meeting.
7		MR. RICHARDS: I have no further question
8		Your Honor.
9		THE COURT: Any re-direct?
10		MR. CHALENSKI: Yes, sir.
11		RE-DIRECT EXAMINATION
12	ВЧ	MR. CHALENSKI:
13	Q	Do you have both notebooks, Mr. Hummell?
14	A	Yes, sir (Offering).
15	Q	And Mr. Hummell, Defendant's Exhibit K is another
16		notebook, and is it also a notebook which you owned and
17		you testified it is among several?
18	A	Yes, sir.
19	Q	When did you first start taking notes in that notebook
20		(Offering)?
21	A	January 22nd, of 1974.
22	Q	And was that some schooling that you undertook for the
23		purposes of obtaining pilot ratings?
24	A	Yes, sir, it was.
25	Q	Now, did there come a time when you interrupted using

1 that notebook? 2 Yes, sir. 3 Q And when did that happen? Well, there are several different courses in here at 4 A 5 different dates. The next use of it in this notebook was made on 5/3/75. 6 7 Q Did you say 5/3/75, so there is a period, roughly after 8 the beginning of 1974, through May of 1975, that you did 9 not use that book, or take notes in it? 10 A Yes, sir. 11 Now, there came a time when Government's Exhibit thirty-12 six left your possession, and you did not have it on 13 October 19th, 1974? 14 A Yes, sir. 15 Q And there are notes that you did take on that date, now, 16 is that correct? 17 A On the 19th, yes, sir. 18 And these are the notes which are contained in Government's 19 exhibit thirty-six, which are scotch taped into the 20 residue of other pages in that book? 21 Yes, sir. A 22 And can you explain what writing was on the margin of 23 the pages into which you scotch taped the writing or the 24 pages? 25

No, sir, I don't recall what it was. I must not have

1 thought it of value and it must have been on another 2 subject or else I would not have taken it out of my 3 notebook. It might have been the same case in reverse. 4 that I had this notebook when I was at another course, 5 and I moved it over again. 6 Q Do you recall how long after October 19th, 1974, you re-inserted the notes from your -- that you took at that 8 meeting, into the book? 9 I don't recall the exact dates that I reinsersed them. A 10 but I believe I was still employed at Commuter at that 11 time, so it would have been before February 19th of 1975. 12 Is it your testimony under oath that the pages, well, 0 13 three total pages which relate to a meeting of October 14 19th, 1974, are notes which you took at that meeting, and 15 contemporaneous with what you heard at that meeting? 16 Yes, sir. A Now, in Defendant's Exhibit K, there are pages, apparently, 17 Q 18 cut out, to which nothing is stapled in that book, is 19 that correct? 20 Yes, sir. And do you have any recollection where you obtained the 21 paper for Government's Exhibit thirty-six, on which 22 23 the notes of October 19th, 1974 were taken? I thought that it might have been out of here. But it 24 may have been out of one of the other books. 25

1 Q Can you compare the two pages, and do they appear to be similar or identical? 2 They appear to be quite similar. 3 4 Q Do they appear to be identical to you? 5 I couldn't say if they are identical. So you could have taken those pages out of some other Q 6 7 book? 8 Yes, it could have been out of another one. 9 Instead of this identical one? A Yes. 10 And now, are there pages in Defense Exhibit K where you 11 performed a similar operation of the scotch taping of 12 pages into the stub of another page? 13 Yes, sir. 14 A And as an example of that, notes taken on January-18th, 15 Q 1975, start with Air North? 16 Yes, sir. 17 A And you apparently started an employment with somebody 18 Q else and took some notes in another notebook, and then 19 you put them in here? 20 Yes, sir. 21 Did there come a time when you stopped taking notes of 22 Q meetings at Commuter Airlines? 23 24 Yes, sir. A 25 Was that purposeful? Q

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1	A	Yes, sir.
2		MR. SHANAHAN: What was that?
3		MR. CHALENSKI: Was that purposeful.
4	BY M	R. CHALENSKI:
5	Q	With reference to your forty hours of multi-engine time,
6		when you were employed by the Defendant, was any mention
7		made to you of a requirement that you obtain additional
8		multi-engine time?
9	A	There was mention of the fact that an insurance policy,
10		and I believe that we were carrying I.B.M. people,
11		required one hundred hours of multi-engine time of the
12		first officer and co-pilot.
13	Q	Do you recall when you obtained one hundred hours of
14		multi-engine time?
15	A	I can ascertain that. It was sometime after being
16		employed with Commuter.
17	Q	Do you recall how long it took?
18	A	Passed one hundred hours of multi-engine time on the
19		7th that would be 7/30, 1974.
20	Q	And that would be July 30, 1974?
21	A	Yes.
22	Q	With reference to the meeting which you mentioned at
23		which cost or costing the company money was discussed,
24		you also said that it was discussed in retaliation for
25		more people being dismissed, and do you recall what

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1		people were dismissed prior to that meeting?
2	Α.	I believe it was after Mr. Williams, Mr. Ronald Williams
3		le. the engloy of the company.
4	Q	Anybody else?
5	A	Mr. Sholl, also, but it wasn't immediately following
6		Mr. Sholl.
7	Q	Mr.Sholl had been dismissed some time prior to that
8		meeting?
9	A	Yes, sir.
10	Q	And do you know what date Mr. Williams was discharged on?
11	A	No, sir, not the exact date; no.
12	Q	And in any event, to meeting at which that was discussed
13		was after Mr. Williams and Mr. Sholl had been discharged?
14	A	Yes, I believe it was.
15	Q	Did you discuss any measures by which you could cost
16		the company, prior to the discharges of Mr. Williams
17		and Mr. Sholl?
18	A	No, sir.
19	Q	And what was the end result of the discussion of costing
20		the company money and the means to do that, at the
21		end of that meeting?
22	A	It was dropped for two reasons: one, it wasn't feasible
23		to do that with the airplanes, to change the fuel
24		consumption and it wouldn't change it very much and
25		two, it wouldn't certainly be a very safe way and it
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U.S. COURT REPORTERS FEDERAL BUILDING ALBANY, N. Y.

1 would be dangerous to our fellow pilots, ourselves, 2 and to our passengers. And you mentioned that a stoppage was discussed during 3 the Spring of 1975, after you were terminated, and you mentioned stoppage and a slow down prior to that? When 6 was the slow down discussed? I am not sure of the exact date. I believe it was 8 discussed at a meeting at the Treadway, at Owego, New York. 10 Is that the same meeting that any stoppage was discussed? 11 No -- stoppage? A 12 Yes. 13 No, I don't believe so. 14 A slow down was different than a stoppage? I believe so. I believe it was. The subject was --15 16 broached at a different time. 17 Do you recall when the slow down was discussed? 18 I think it was discussed at the Treadway meeting, but 19 I am not certain of the date. 20 Was that after or before you left? 21 The slow down was discussed, -- correct. I believe that 22 the slow down was discussed before it. 23 Q Was anything else discussed at that meeting? 24 There were -- it was at a union meeting, yes, sir, and 25 union matters, on the institution of grievance procedures

1 and such stuff. To the best that you can, can you recollect the date 0 2 of that, maybe with reference to this other meeting 3 at which the ways to cost the company money was discussed? 4 It was sometime later, I believe. 5 Q It was after that meeting? 6 7 Yes. Because it would have been after Mr. Williams was fired? 8 Q 9 A Yes. Q 10 And before you were fired? Yes. 11 12 MR. CHALENSKI: Thank you, Mr. Hummell. 13 RE-CROSS EXAMINATION BY MR. SHANAHAN: 14 Mr. Hummell, do you have any notes to which you can refer 15 with reference to these discussions at the union meetings 16 about costing the company money? 17 18 No. No, sir, I don't believe so. Did you ever take any notes at all of any union meetings? 19 20 Yes, sir. 21 And do you have those with you? 22 Yes, sir. A 23 Well, would you want to take a look at them and see if 24 you can refresh your recollection with reference to 25 these talks that you just have been asked about on the

1 question of slow downs or costing the company money? 2 No, sir, there is nothing in my notes in reference to 3 that. 4 Which Exhibit are you looking at? 5 I am looking at Government's Exhibit thirty-six. 6 Well, that is the Exhibit in which the only reference to union activity were a series of five lines of 8 initials? 9 Yes, sir. That is the voting. 10 Well, there is nothing at all on the subject of what 11 was taken up at a union meeting, contained in that 12 paragraph, was there? 13 Yes, sir. This was what was being discussed at the 14 meeting. 15 And what meeting was that? What date was it? 16 That was the 24th. 17 Of what? 18 10/24/74. 19 All right. Now, do you have any other notes or any other 20 notebooks that would deal with the matter of what was 21 said at these union meetings on the subject of costing 22 the company money? 23 No. I don't believe so. You mentioned the date in answer to Mr. Chalenski that 25 had to do with something about North Airlines, or some

1	-	such thing?	
2	Α .	That is my current employee, sir, Air North.	
3	Q	And you said that somewhere you started taking notes	
4		in connection with that employment?	
5	Α	Yes, sir.	
6	Q	And you referred to a date?	
7	A	Yes, sir.	
8	Q	Would you give us that date again, please? I think it	
9		was the start of your notes, if I understood it correctly	?
10	A	Yes, sir. It was 11/18/75.	
11	Q	11/18/75? Okay.	
12		MR. SHANAHAN: That is all.	
13		MR.RICHARDS: I have a couple.	
14	BY M	R. RICHARDS:	
15	Q	Isn't it a fact, Mr. Hummell, that on February 17th,	-
16		1975, you did participate in a sick-out?	
17	A	February the 17th? No, I don't believe so, sir, that	
18		is a Holiday, I believe.	
19	Q	And are you sure that you didn't call in sick, when you	
20		weren't sick?	
21	A	I do not know if that was the 17th.	
22	Q	Did you in February, in any way participate in a sick-ou.	?
23	A	No, sir.	
24		MR. RICHARDS: I have no further questions	•
05		RE-DIRECT EXAMINATION	

1	BY MR. CHALENSKI:
2	Q In any event, was any participation in a sick-out ever
3	mentioned to you by either Defendant Winston or Bell?
4	A No, sir.
5	MR. CHALENSKI: I have no further
6	questions.
7	THE COURT: You are excused.
8	(Whereupon, the witness was excused.)
9	THE COURT: We will take a short recess.
10	(Whereupon, the Jury was excused.)
11	THE CLERK: Court stands for a short
12	recess.
13	(After a short recess, the proceedings
14	were resumed before the Court and the Jury.)
15	MR. CHALENSKI: Okay, I will call my next
16	witness, Mr. Jan Solberg.
17	JAN SOLBERG
18	Called as a Witness, being first duly sworn, was
19	examined and testified as follows:
20	DIRECT EXAMINATION
21	BY MR. CHALENSKI:
22	Q Where do you reside?
23	A At Buckman 42, in Birchwood.
24	Q And by whom are you employed?
25	A Pardon?

1	Q By whom are you employed?
2	THE COURT: Where do you work?
3	THE WITNESS: I work for Commuter Airlines
4	Binghamton, New York.
5	BY MR. CHALENSKI:
6	Q How long have you been so employed?
7	A March, 1972.
8	Q And how long have you been a pilot?
9	A For eight years.
10	Q And what position do you hold with the Defendant,
11	Commuter Airlines and Broome County Aviation?
12	A Captain.
13	Q And how long have you been a Captain?
14	A Since February, 1974.
15	Q Directing your attention to October of 1974, do you
16	recall a meeting on Saturday, October 5th, 1974, at
17	which the Defendant Winston spoke to the captains?
18	A Yes, I do .
19	Q Do you recall anything the Defendant Winston said at
20	that meeting?
21	A Yes.
22	Q And can you the Jury what he said?
23	A He was talking about the company and in the past and
24	what was coming up in the future. He also mentioned to
25	us that if we voted for the union and the union got in,

1 he was going to -- to close the doors, sell all of his ariplanes, and we would be without a job. Do you recall the Defendant Bell speaking at that meeting? 3 Yes, I do. 4 And can you tell the Jury what the Defendant Bell said 5 at that meeting? 6 7 He also talked about the union and he said there is. 8 to the best of my recollection. 'I realize that some of you guys have had bad days and really didn't feel up 9 to it, flying with me, and if the union gets in, this 10 11 would not longer be tolerated.' MR. SHANAHAN: Would you read the last 12 13 part of that? THE COURT: If the union gets in this 14 15 will no longer be tolerated. BY MR. CHALENSKI: 16 Did the Defendant Bell say anything else, at that meeting? 17 Yes, sir, I can remember his last remarks: 'Either you 18 vote for me, or you vote for Jimmy Hoffa.' 19 Did you attend any other meetings at which the Defendant 20 Winston and Bell spoke to the employee pilots concerning 21 union activities? Not to my recollection. A Did you attend any meetings individually with the 24 Q 25 Defendant Winston or Bell?

1 Yes, I did. You mean concerning --(Interrupting) Concerning the organizational activities 2 0 A No. 3 4 Q Concerning the elections? 5 A The elections, yes. I cannot remember exactly what time 6 it was, but it was right before Dennis Larimore got 7 fired, and Ted came up to me, right before my flight 8 and --9 (Interrupting) Mr. Solberg, for now I am concerned with Q 10 only prior to the election. Were there any meetings 11 at which the ballot was discussed? 12 A Yes. 13 And when did that: meeting take place? 14 I cannot recollect the exact date anymore, but I was 15 called in to Mr. Winston's office and was asked for 16 my ballot. And was that before the union election? 17 Q 18 No -- yes, that was right before the election. A 19 Q Can you tell the Jury what the Defendant Winston said 20 and what you said, at that meeting? 21 A He talked about the company in the past, and the future, 22 and this is -- to the best of my recollection again; 23 the meeting ended with Winston saying words, and I can't 24 remember what he said at the beginning, but he said,

'I want your ballot.' I told him I didn't have it.

25

1 Q And did that meeting conclude, then? It did. I stated that I would give it to him. 2 A You stated that you would give him your ballot? 3 Yes, because of the fact that I was flying out on my 4 run. I didn't have the ballot with me, and I cold him 5 6 I would get it for him. And did there come a time when you gave the Defendant 7 0 8 Winston your ballot? Say again, please? 9 Did there come a time when you gave the Defendant Winston 10 your ballot? 11 12 Yes, sir, I was approached another time, in the office. 13 I was walking through there, and he asked me again for my ballot, and I told him I would have it for him in a 14 15 couple of days. Next time I came through his office. and I was not there every day. 16 And did there come a time when you received a ballot 17 Q 18 from the National Mediation Board? Yes, sir. 19 20 Q And what did you do with that ballot? I thought this was a private --21 22 (Interrupting) No, Mr. Solberg, just what you did with that first ballot? 23

24

25

A

I sent it in.

And you voted and sent it in?

- 1 A Right.
- 2 Q And did there come a time when you obtained a duplicate
- 3 ballot?
- 4 A Yes, sir.
- 5 Q And what did you do with that duplicate ballot?
- 6 A I gave it to Mr. Winston.
- 7 Q And did there come a time when you obtained a third
- 8 ballot?
- 9 A Yes, sir.
- 10 Q And where did you get that third ballot?
- A Well, actually, what happened then: I got my first ballet
- from Delbert DeLaurentis , and this is after I already
- voted for the union. He gave his to me because I didn't
- have a second ballot by that time, and I gave that to
- Mr. Winston. Then after some time when I received my
- second ballot in the mail, my duplicate ballot, I gave
- that to Mr. Winston. I don't know why, but I got my
- second ballot a couple of days later than everybody else
- 19 Q Now, following the election did you have any conversations
- 20 with the Defendant Winston concerning whether or not
- 21 you voted in the election?
- 22 A No, sir. Not to my recollection right now.
- 23 Q Did you have any conversation with the Defendant Bell?
- 24 A No. sir.
- 25 Q Mr. Solberg, Government's Exhibit number eighteen is a

1 letter from the attorney for the Defendants to the Executive Secretary of the National Mediation Board 2 stating that Broome County Aviation has proof that the 3 following seven individuals who were eligible voters in 4 the election did not vote an original or duplicate ballot. 5 and your name is listed as one of those. Did you have 6 any conversation with the Defendant Winston concerning whether or not you voted a duplicate or an original 8 ballot? 9 No, sir. But I was approached by Mr. Bell to sign a 10 statement that I did not vote in the election. I had 11 never got to sign this paper because I went on vacation 12 to Europe. 13 And did you tell the Defendant Bell anything, when he 14 approached you? 15 I cannot recall exactly what I told him, but I told him A 16 I would see to it that I would do it, if I had some time 17 But I was not in Binghamton that often. 18 Did you tell the Defendant Bell whether or not you 19 voted, at that time? 20 I cannot recollect exactly what went on when I talked 21 to Ted Bell. He asked me to sign this letter that I 22 did not vote, and I dropped it right there, because I 23 didn't want to sign anything. 24 And I show you Government's Exhibit number twenty-one 25

1 in evidence, and is that a letter which you sent to the National Mediation Board telling them that you did, in 2 fact, vote in the election? 3 Α Yes, sir. 4 And any time prior to your taking the stand today, have Q 5 you told the Defendant Winston or Bell that you voted 6 in this election? 7 8 A No, sir. Now, during the course of your employment with the Q 9 Defendant, have you observed any practice where the co-10 pilots switched flights? 11 Several times, sir. I was involved in that when I flew 12 A myself as a co-pilot, and it was common practice among 13 the co-pilots that if somebody else could take somebody 14 else's flight, as long as the flight was covered it was 15 up to the individual to cover it. 16 Okay. Was there any duty on the part of the co-pilots Q 17 to notify the administration that they were switching 18 flights? 19 No, sir. A 20 Did you ever fly with Robert Slough? Q 21 22 Yes, sir. Now how often did you fly with him? 23 Q I flew with Bob pretty nearly every day. 24 A Would you characterize yourself as being a pilot that 25

1	he flew most often with?
2	A Yes, sir, definitely.
3	Q And can you characterize his availability for flights?
4	A He was always there, as far as I can remember.
5	Q Were you ever asked by either Defendants whether or not
6	Robert Slough was regularly available?
7	A No, sir.
8	Q Did you have any conversations with Defendant Bell prior
9	to Dennis Larimore being fired?
10	A Yes, sir.
11	Q And what did the Defendant Tell say, and what did you
12	say during the course of that conversation?
13	MR. SHANAHAN: I would like to find out,
14	first of all, some foundation for this: when and where
15	it occurred.
16	THE COURT: Yes.
17	BY MR. CHALENSKI:
18	Q When did that conversation take place?
19	A This conversation took place, to the best of my
20	recollection, I would say within a week before Larimore
21	got fired.
22	MR. SHANAHAN: Within a week from what?
23	What?
24	THE WITNESS: Within a week, to the
25	best of my recollection, what I can remember right now,

ì before Dennis Larimore got fired. BY MR. CHALENSKI: 2 Where did it take place, Mr. Solberg? Q 3 It took place in an airplane. I just came up from New York, and I landed and I taxied the airplane to the 5 hangar, and I was supposed to take another flight with 6 Dennis Larimore. Mr. Ted Bell asked me to talk to Dennis 7 8 because he thought he was a little bit too vocal about his support for the union. 9 Okay. Those are Mr. Bell's words? 10 Q To the best of my recollection, yes. 11 A Are you aware of the requirements of wearing a uniform 0 with Broome County Aviation, Inc., and Commuter Airlines, 13 Inc.? 14 Yes, sir. 15 A When does the company require you to wear a full uniform 16 Q Well, first, can you describe what a full uniform is? 17 It means that you wear a standard uniform, and we buy 18 A it through the company with wings, stripes, a white shirt, 19 a dark tie and black shoes. 20 Okay. Is there anything less than that accepted on any 21 Q flights at Commuter? 22 Well, this is mainly on Commuter flights, and when we 23 flight charter flights, or mail flights, we will either 24 wear, you know, just casual clothes with a tie and like

25

1 I am right now. On mail flights, we usually dress in dungarees, and boots, and a shirt. That is it, because 2 we get -- there is a lot of dirt in those airplanes, and 3 we get dirty. And during the summer do you wear your jacket and full 5 uniform ? No.sir, we wear a white shirt with epaulets, and pants 8 and shoes. Do you recall ever discussing ways to cost the employer 10 money? Yes, there were discussions right after Ronnie Williams 11 A 12 got fired. 13 Anything before that? To my recollection, no. 14 Mr. Solberg, I am going to read you a list of pilots who 15 were terminated by the company during the years prior 16 to October 2, 1974. I would like you to tell me whether 17 you know whether they were fired, whether they quit, 18 whether they were laid off because of unavailability of 19 work, or whether you just don't know any of those. Okay 20 21 Yes, sir. A Just that. This is 1971 employees who were terminated. 22 23 First is Robert Hill? 24 I don't know him. Excuse me, you weren't even employed by the comporation 25

1 in 1971? 2 No, not until 1972; March of 1972. Well, I will proceed to 1972. Next is John Cheek? 3 Quit. 4 5 George Fitzgibbons? Q A Quit . 6 7 James Lindsey? 8 As far as I know, he quit. 9 MR. RICHARDS: I am sorry? 10 THE WITNESS: Quit. 11 BY MR. CHALENSKI: 12 Dennis Meyer? 13 I don't know him. 14 George Morning? 15 Quit. 16 William Ogden? 17 Don't know him. John O'Neil? 18 To the best of my recollection, he was fired, because 19 I was the one that took his job. 20 Fred Reiser? 21 22 He was part time, and I do not think that we could have A any more part time pilots at that time, and that is the 23 reason why he was laid off. 24 25

Stephen Schkier?

Q

1	A	I really don't know what happened to him. He told me
2		he left.
3	Q	Dana Smith?
4	A	Dana Smith was laid off.
5	Q	Was he a part time employee, also?
6	A	Yes, sir.
7	Q	Now, employees who left the employ of the company during
8		1972: Gregory Ferraro?
9	А	Fired.
10	Q	Ralph Keiger?
11	A	I really don't know what happened right there. I have
12		heard two stories and
13		MR. RICHARDS: Objection.
14	BY N	AR. CHALENSKI:
15	Q	Just what you know, that is all?
16	A	I really don't know.
17	ବ	Theodore Cramer?
18	A	Left.
19	Q	Fired or quite or laid off or what?
20	A	No, he quit.
21	Q	Lance Whitne, ?
22	A	He quit.
23	Q	Ivan Williams?
24	A	Quit.
25	Q	Nathan Yahuda?

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1	Α.	Took a leave of absence and never came back, as far as	
2		I know.	
3	Q	Now, 1974: David Carr?	
4	A	Quit.	
5	Q	William Doris?	
6	A	Bill Dolas?	
7	Q	Yes.	
8	А	He quit.	-
9	Q	Roy Johnson?	
10	A	He quit.	
11	Q	Ivar Ore?	
12	A	Quit.	
13	Q	Rand Peck?	
14	А	Quit.	-
15	Q	Mr. Solberg, these four captains that I am going to name	-
16		were employed after October 2 of 1974. I would like you	
17		to tell the Jury what duties they performed upon commencing	3
18		their employment. Stephen McKeon?	
19	A	He was a co-pilot before he got upgraded to become a	
20		captain.	
21	Q	Do you know how long he performed as a co-pilot?	
22	A	I would say up to maybe five or six months.	
23	Q.	How about Henry Mellick?	
24	A	He was also a co-pilot, upgrading to become a captain.	
25	Q	And how long did he perform as a co-pilot?	

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To the best of my recollection, about the same time as Α. five to six months. I would say. 2 Q Francis Lenowski? 3 He was performing the duties of a co-pilot, upgrading to become a captain. And for how long did he perform co-pilot duties? 0 7 To the best of my recollection, about five -- five months. 8 And Fred Greenough? He was also a co-pilot, upgraded to become a captain. 9 10 And for how long? I believe it was -- oh, four or five months. I cannot 11 recollect too good, but I think it was something like 12 13 that. Is there a practice in the company of first employing Q 14 pilots and co-pilots? 15 Yes, sir. Well, what happened, they hired a man to become 16 a captain, and he would have to fly the line as a co-17 pilot to become familiar with the routes and the 18 equipment. 19 And how long did a man fly as a co-pilot to become 20 familiar with the routes and equipment? 21 If they were already hired from the outside to become 22 a captain, I would estimate two months or three months. 23 Not any more than that, I would believe, if they were 24 25 already hired as a captain.

- 1	
1	MR. CHALENSKI: Thank you.
2	CROSS EXAMINATION
3	MR. RICHARDS: May we have a moment,
4	Your Honor?
5	THE COURT: Yes.
6	MR. RICHARDS: May I have this marked
7	as Defendant's Exhibit M.
8	THE CLERK: Defendant's Exhibit M,
9	marked for identification.
10	(Document marked Defendant's Exhibit M
11	for identification.)
12	BY MR. RICHARDS:
13	Q Mr. Solberg, I would like to show you Defendant's
14	Exhibit M, marked for identification, and ask you if
15	you can identify that document (Offering)?
16	A Yes, sir, I can.
17	Q Now, what is that document?
18	A It is a copy of the Reader's Digest.
19	Q A copy of the Reader's Digest article?
20	A Right.
21	MR. CHALENSKI: I am going to object to
22	any further questioning along the lines of that, and
23	may I approach the Bench on it?
24	THE COURT: All right.
25	(Whereupon, the following took place at

1 the Bench, out of thehearing of the Jury.) 2 MR. CHALENSKI: This is self-serving, and inflammatory in this case. It is about a mob 3 take over, and I have not brought that out on direct, 5 and not alluded to it in any place in my direct examination. 7 MR. RICHARDS: But it was that witness that brought the article, unsolicited into Jerry Winston and to his attention. It was this witness who brought 10 that article into Mr. Winston and brought it to his 11 attention, Your Honor, and I want to lay the foundation that he voluntarily came into Winston's office to indi-12 13 cate his attitude toward the union. THE COURT: I will sustain the objection 14 to this document on the ground that the probative value 15 is far less than its prejudical fact. 16 (Whereupon, the following took place 17 18 before the Court and the Jury.) BY MR. RICHARDS: 19 Mr. Solberg, prior to the election, did you voluntarily 20 come into Mr. Winston's office to discuss unions, 21 22 generally? No, sir, not after I had been called into his office 23 the first time. I was in his office the first time, 24 and after he asked me for my ballot, I knew if I ever --25

1	I knew if I didn't give it my job would be on the line.
2	Q Before you went into the office for the first time,
3	had you voluntarily gone into Mr. Winston's office to
4	discuss unions, generally?
5	A Negative, and not before, but after I was called into
6	Mr. Winston's office, as far as I can relate.
7	Q After you had your first visit with Mr. Winston then,
8	you voluntarily came into his office to discuss union
9	matters, generally?
10	A Yes, sir.
11	Q Did you, at that time, call to his attention an article
12	that you had read in the Reader's Digest?
13	MR. CHALENSKI: I believe that that is
14	the same article that we have already discussed.
15	MR. RICHARDS: I am not going to violate
16	the Court's ruling, Your Honor.
17	THE COURT: I wouldn't fool around with i
18	if I were you.
19	MR. RICHARDS: Yes, Your Honor.
20	BY MR. RICHARDS:
21	Q You may answer.
22	A Could you please repeat it.
23	THE COURT: I am afraid that you didn't
24	get my message. I don't think you should trespass on
25	1+ 1f T warm you

1		MP DICUADOS VALLA
2	BV	MR. RICHARDS: Very well, sir. MR. RICHARDS:
	"	MI. HICHARDS:
3	Q	Now, you and I had a discussion in September of 1975,
4		do you recall that, Mr. Solberg?
5	A	Yes, sir.
6	Q	And do you recall at that time, I asked you what Mr.
7		Winston said to you, the first time that you went into
8		his office?
9	A	I cannot recall. Maybe you can refersh my memory, right
0		now, because I have had four meetings with you, and I
1		cannot recollect what was said in every meeting.
2	Q	Well, do you recall that any of these meetings that you
3		had with me you indicated that you couldn't recall what
4		Mr. Winston said to you at the time that you went into
5		that first conference?
6	A	I really don't get the question. Would you please
17	ବ	(Interrupting) Do you recall when you and I met,
8		regarding this matter?
9	A	Yes, sir.
20	Q	And do you recall my asking you what if you would
21		tell me what Mr. Winston said to you the first time that
22		you went into his office?
23	A	You asked me if Mr. Winston asked me for my ballot, and
24		I said, 'Yes.'
25	0	And do you recall at these meetings telling me that you

1		couldn't recall the conversation between you and Mr.
2		Winston?
3	A	I recall that very good, because actually what was said,
4		we have had so many meetings, and every time we had a
5		meeting, Mr. Winston would always tell about the company
6		and in the past, and also about the future.
7	Q	In any event, I presume that when you came here to testify
8		today, you had an opportunity to review your statement
9		with the F.B.I., is that correct?
10	A	Yes, sir.
11	Q	And that allowed you to refresh your recollection
12		as to what was said at this meeting with Mr. Winston?
13	A	Yes, sir, because when I got called into Mr. Winston's
14		office I was advised before hand to write down the date.
15	Q	Let me ask you this: who advised you before hand to
16		write down the date?
17	A	A good friend of mine that works for the police.
18	Q	And did you then take notes of your conference with
19		Mr. Winston?
20	A	No, sir. He just advised me to write down the date and
21		what happened not word by word, but
22	Q	(Interrupting) Well, did you following the conference,
23		write down what was said at that conference?
24	A	Yes, I think I had a quote and unquote, in there at one
25		time.

Q And do you still have those notes as to what was said 1 at that conference? 2 No, sir. When I was interviewed by the F.B.I., he was A 3 asking me questions, and I answered, and I gave the notes 4 to the F.B.I., and I answered as good as I could, and 5 that is why I made my statement to the F.B.I. 6 Do I understand then that you had some notes that you Q took following the conference with Mr. Winston, which 8 you turned over to the F.B.I.? 9 No, sir, it was a note, but it was nothing in particular A 10 that happened to the meeting. It stated the date when 11 I was called into the office, and what he asked me for. 12 Yes, and had you written this down after your meeting Q 13 with Mr. Winston? 14 A Yes, sir. 15 And did you write it down on a sheet of paper, or sheets Q 16 of paper? 17 I had it on -- it was not even a sheet of paper. It was 18 a little note. 19 All right. And did you thereupon turn it over to the Q 20 F.B.I. later on? 21 Not to the F.B.I., no, because I kept it. A 22 And where is that sheet of paper? Q 23 That sheet of paper, I have no idea, because when I gave 24 my report to the F.B.I., that information was right in 25

1		there.
2	Q	And so then you destroyed the piece of paper?
3	A	I did not destroy it.
4	Q	You threw it out?
5	A	I threw it out because that is what was in my report
6		to the F.B.I.
7	Q	Okay. How long would you estimate your meeting with
8		Mr. Winston lasted?
9	A	That first meeting, it was probably what forty-five
10		minutes.
11	Q	Do you recall subjects discussed by Mr. Winston at this
12		meeting?
13	A	Yes. As I told you before, he was talking about the
14		company and the past and the future and the meeting would
15		end up with, he got very mad in the end, and he showed
16		me a whole pile of bills, and he asked , 'Who do you
17		think is going to pay these bills?
18	Q	Well, when you said he was discussing the past and the
19		future, do you mean that he reviewed for you the growth
20		of the business as it started in 1964?
21	А	Not to my recollection, right there. He was not going
22		through the company history. He was just going through,
23		in general, what happened since I came there.
24	Q	Well, you attended the captains' meeting on October 5th,
25		is that correct?

- A Yes, sir, to the best of my recollection, I did.
- And would you say that what was mentioned by Mr. Winston at your meeting with him was substantially what was said at that captains' meeting on the 5th?
- A No, not -- it was not in the form, and to my recollection it was not.
- By form, it wasn't in that order, or were there other topics discussed by Mr. Winston in his conference with you?
- 10 A Not to my recollection. The captains' meeting was a little
 11 bit different.
- All right. Mr. Winston discussed the company, both past and present. Can you think of any other subjects that he discussed in this forty-five minute conference?
- 15 A No, sir, not to my recollection right now.
- Did you make any statement regarding unions, from your experience, in any way at this conference?
- 18 A I told him basically I was not a union man.
- 19 Q Did you say anything further?
- 20 A To myself, I did.
- 21 Q Did you, when Mr. Winston asked you for your ballot, 22 was that at the end of the conference?
- 23 A That was in the end of the conference, and he looked at
 24 me, and I can remember that very plainly, because the
 25 way he asked it, 'Now, where is it?' And I said, 'What is?'

- 1		
1		'Now, where is it,' and I said,'What is,'
2		and he came back and said, 'I want your ballot.'
3	Q	Was there anything further said by either you or Mr.
4		Winston regarding the ballot?
5	A	I said I had to get it first at home.
6	Q	And anything further?
7	A	To my recollection, right now, no.
8	Q	All right. Now, you had occasion to fly with the co-
9		pilot, Ira Josephson, is that correct?
10	Α .	Yes, sir.
11	Q	And did you have occasion to fly to the Newark Airport
12		with him where he was acting in the capacity as a co-
13		pilot?
14	A	Yes, sir.
15	Q	And was there an occasion in the fall of 1974 when Ira
16		Josephson refused to take off from Newark Airport, while
17		you were the Captain?
18	A	This was not in the fall of 1974. It was in the Spring
19		of 1974, sir.
20	Q	And would you relate to the Court and the Jury the
21		circumstances surrounding that?
22	A	Yes. The reason why I can remember the time was I had
23		just checked out as Captain and I had just started flying
24		the line, and to the best of my recollection, it happened
25		at the end of April, or the beginning of May. We went

to Newark Airport in one of the Dumonts , and that is one of the Beechcraft, one of the older model airplanes. The weather wasn't too good, and we had a lot of thunder storms, and Ira got a little bit nervous. Upon landing, he tried to persuade me to hold about six or seven miles outside of the airport, and that means to circle around because we had some thunderstorms roving in from the west to the east, and I tried to calm him down.

Q You tried to what?

Calm him down, and tried to tell him that our flight was all right, that we would get to the ground all right, and beat the thunderstorm into the airport. We landed, and we deplaned our passengers, and got in new ones on board, and before we began to start taxiing out, we have got to call the clearance in order to get clearance to go back to Binghamton. I picked up the mike, and I said, Commuter so and so is requesting I.R. for clearance, and that is a light plan clearance back to Binghamton, and Ira looked at me and said un—in and I said, What do you mean by that un—un?' And that was something special and I said, What do you mean by that do you mean by that un—un?' and he said.'I am not going.'

Q Now, Ira was the co-pilot?

A Ira was a co-pilot.

1 And what did you say then? 2 I said, 'Ira, we are going.' You said what? 3 'We are going'. 5 And was anything said in reponse to that? 6 Well, I sort of thought that in the situation. I was 7 just a new captain on the line, and this never happened 8 to me before and I was new. Clearance delivery came out to us then, because I said, 'Let me give them a call. 9 I called them up, and they gave us a forty-five minute 10 11 gate hold, right at the gate because of the weather, 12 and they had to reroute all of the departures going out 13 west. 14 Now, who was responsible in that aircraft to make the 15 decision whether or not you should take off? 16 The Captain, the pilot in command there. 17 That would be the pilot, and did the co-pilot have anything 18 to say about when that aircraft should take off or not? The Captain is the pilot in command. He is the one that 19 makes the decisions. 20 21 And following this incident, did you report it to any 0 22 representatives of Commuter? Yes, sir I came back to Binghamton and I called up 23 A 24 Ted Bell, and I told him what happened, and I also asked

him what he wanted to do when something like that

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1		
1		happened because I was new and I really didn't know how
2		exactly to do it, and I don't think anybody would know
3		what do to.
4	Q	Now, Mr. Solberg, you are familiar with I withdraw
5		the question.
6		You have flown the Metro aircraft, is
7		that correct?
8	A	Yes, sir.
9	Q	Now, are you familiar with the procedure by which the
10		doors open in a Metro?
11	A	Yes, sir, I am.
12	Q	And is this procedure part of the training in the ground
13		school on a Metro?
14	A	Yes, sir.
15	Q	And from your recollection, what is the procedure that
16		a pilot or a co-pilot should use when he is opening that
17		door on a Metro?
18	А	The procedure is to have one hand on the handle and then
19		your left hand on the left chain.
20	Q.	Now, what is the reason why that pilot's hand should be
21		on the left chain?
22	A	In order to stop the door from free-falling.
23	Q	And under what circumstances would the door free fall?
24	A	Well, if you pushed it out a little bit too hard, and
25		sometimes the doors opened a little bit hard, and I would

1	-	think that you would break the snubber, and the door
2		would free-fall.
3	Q	And in the event that the snubber system should fail,
4		would the door then free-fall?
5	A	I would imagine so.
6	Q	Yes. And the purpose of keeping your hand on the chain
7		is to hold that door from free falling, is that your
8		understanding?
9	А	Yes, sir.
10	Q	Have you been required in the past in your duties as
11		a pilot, to test any aircraft?
12	A	Yes, sir.
13	Q	And were you given any sort of advance notice as to when
14		you would be required to test fly a plane?
15	A	In instances I have test flown airplanes, and I have had
16		a couple of hours to do it, as far as I can remember.
17	Q	Now, had there been any instances in which you had been
18		asked to test fly an airplane in less than two hours?
19	A	Maybe an hour or so, but I don't recall any specifics;
20		I do not.
21	Q	Now, you were you came with Cornter in 1972, is
22		that correct?
23	Α	Yes, sir.
24	Q	Now, do you in October of 1973, were you still a
25		co-pilot?

October of 1973 I was. 1 Q Still a co-pilot? 2 Right. 3 Do you recall a conference between the co-pilots and management in October of 1973 regarding A.T.R requirements 5 and salary schedules? 6 I cannot remember any specific meeting, but I can remember when we were talking about salaries, and we 8 were advised that after three years, when the co-pilots 9 have that, they would stop, and not increase any more. 10 Q And was it your understanding that after this three-11 year period the co-pilot would have been expected to 12 have gotten his A.T.R.? 13 I don't really know too much about the A.T.R. 14 my A.T.R. when I came here, and --15 (Interrupting) You had no -- is it your testimony that Q 16 you have no understanding of the company policy regarding 17 co-pilots obtaining their A.T.R.'s within a three 18 year period? 19 That is not what we talked about in that meeting. We 20 talked about the salary and how the salary would not 21 increase after three years. Well, what is the -- excuse me? 23 I cannot really recollect any talk about the A.T.R.'s. 24 Was there any explanation as to why the salary would not 25

1		increase beyond that three year period?
2	A	Well, if it did, your salary, through the co-pilots,
3		would come right up to the captain.
4	Q	At that time the captain would have become a captain?
5	A	I would imagine so.
6	Q	And in order to become a captain you would have had to
7		obtain your A.T.R. is that correct?
8	A	That is correct.
9	Q	Now, you worked out of the Elmira Operation, is that
10		correct?
11	A	Yes, sir.
12	Q	And you are actually stationed or you live in Elmira,
13		isn't that correct?
14	A	Yes, sir.
15	Q	And do you recall a time in September of 1974 when
16		management was considering transferring Josephson
17		to the Elmira operation?
18	А	Let me first say something here about that Elmira
19		Operation
20	Q	(Interrupting) Well, let me ask you: do you recall
21		when Josephson was being considered by management for
22		transfer to Elmira? Do you recall that?
23	A	When the first Elmira Operation started? Is this for
24		the start-up of the Elmira Operation?
25	Q	Well, September of 1974?

1 A I was not asked about anything in the beginning of the Elmira Operation. 3 Well, let me frame it this way: were you ever requested by management to give a recommendation as to whether 5 Josephson should be transferred to the Elmira Operation? I was not a captain in Elmira at that time, because 6 7 Lamos and Don Reeve was a captain flying out of Elmira. 8 Excuse me, but did manangement, at any time, ask your 9 recommendation as to whether or not Josephson should be transferred to Elmira? Can you recall? 10 No, I cannot recall a specific answer right there, or 11 that they asked the question about Ira at that time. 12 Now, you indicate that, to your recollection, a pilot 13 by the name of McKeon has, within the past two years, 14 been hired by the company, and do you recall approximately 15 16 the date that he went to the company? No. McKeon? 17 18 Yes. is it McKeon? No, I don't think that I answered that. I don't know 19 20 him. Well, perhaps I should ask you: I understood your testimony that you identified a person by the name of 22 . McKeon, who was used as co-pilot and upgraded as a 23 captain and flew as a co-pilot for five or six months, 24 25 is that your testimony?

- 1			
1	Α	I don't know what you are talking about, about McKeon.	
2		I don't know anybody by the name of McKeon.	
3	Q	Well, let's skip that. How about Mellick?	
4	Α	Henry Mellick I know.	
5	. Q	All right, and in your direct testimony did you indicate	
6		that Mellick was being used as a co-pilot and upgraded	
7		to a captain, and wha' did you mean by that?	
8	A	Well, as far as I know, when you got hired as a captain,	
9		you would get the co-pilot pay and have a co-pilot status	
10		But it is my job as an instructor captain to sit in the	
11		right seat, and instruct this guy to become a captain.	
12	Q	Well, do you know whether or not Mellick was hired as	
13		a captain or a co-pilot?	
14	A	He was hired as a captain. But it takes two guys to fly	-
15		an airplane and one is the captain, and one is the co-	
16		pilot.	
17	Q	I guess that shows us my limit of aircrafts. I understan	d
18		that, Mr. Solberg. Now, did you know the amount of	
19		experience Mellick had, at the time that he was hired	
20		by the company?	
21	A	He had extensive knowledge as far as flying big airplanes	
22	Q	Well, did you know what type of aviation experience he	1
23		had?	
24	A	Well, his aviation experience, flying the kind of	
25		airplanes that we were flying, I would say as an	

1 instructor-captain, in the beginning it was limited. Well, is it your testimony that to your knowledge, 2 2 Mellick was being used as a co-pilot for five or six 3 months after he was hired? 5 Yes, sir, if you consider me a captain. I am sorry? 6 Yes, sir, if you consider me a captain -- I don't know 8 what you mean by this? 9 I am just -- when you referred to a co-pilot in your 10 direct testimony, were you referring to the pilot 11 sitting in the right seat, as opposed to the left seat? 12 Well, the captain can actually sit in both seats but --13 well, the understanding that I have always had that 14 somebody that came in, they were hired as a captain, but 15 they were flying on the line in the beginning as a co-16 pilot. All I want to know is: is it your testimony that Mellick, 17 18 after he was hired, was being used as a co-pilot for five or six months? 19 20 Well, he was not the captain in the airplane. 21 Is your answer, yes, that he was being used as a co-22 pilot? 23 I would say so. A Now, is it also your testimony that the pilot Kanauski 24 Q 25 and Reynolds were also hired as captains, but used as

1		co-pilots for a period of five to six months?
2	A	They were performing the same duties as a captain and
3		a co-pilot, I would say
4	Q	(Interrupting) Now, in your operation at Elmira, you,
5		of course, are not familiar with the flights originating
6		at the Broome County Airport, are you?
7	A	Not too much.
8	Q	And there are certain documents at Broome County Airport
9		which scheduled pilots and co-pilots have to make out
10		certain flights, isn't that correct?
11	A	Right.
12	Q	And to determine what a person's assignment is he would
13		have to look at this flight log, or document to determine
14		what flight he had, was that correct?
15	A	Yes, sir.
16	Q	Now, I presume in those cases Kanauski and I guess,
17		it is Greenough have had opportunity over this five
18		to six month period to check the flight log to determine
19		in what capacity they were working?
20	A	Right.
21	Q	And you also did the same for Mellick, as well?
22	A	Yes, but I might say that I do not recall flying with
23		Fred Greenough at all, and I think that I had one flight
24		with Frank Kanauski.
25		T didn't heer you

1 A I do not recall flying with Fred Greenough at all. I had one flight with Frank Kanauski, and that is it. 2 and in that capacity I flew as a captain. 3 Well, do you base your testimony that Kanauski was used 4 as a co-pilot for five or six months on the grounds 5 that you had a flight with him as a co-pilot? 6 7 Are you talking about Frank Kanauski? 8 Q Yes, I am. Well. I was asked that question and I answered it that 9 he was to me, he was a co-pilot upgrading to a captain. 10 All right. Now, what is the company procedure that any 11 pilot, or captain hired by the company must go through a training period to become a pilot? 13 Right. 14 And during this training period, he would sit in the 15 Q right hand seat, or the co-pilot's seat? 16 In the beginning he would sit in the right hand seat, and 17 A when the captain finally felt that he could move over 18 in the left hand seat, he would move him over. 19 And if I understand your testimony, the training period Q 20 would last anywheres from two to three months, is that 21 correct? 22 I would say with somebody that has the experience, it 23 A 24 would. 25 What is your answer?

Q

1	A I would say for somebody with the experience, it always
2	depends on what kind of equipment you are flying.
3	MR. RICHARDS: I have no further question
4	BY MR. SHANAHAN:
5	Q Mr. Solberg, the meeting of October the 4th of 1974, did
6	you attend that? That was a meeting of the captains,
7	was it?
8	A Right, sir.
9	Q And were you aware that the same day there was a meeting
10	of co-pilots?
11	A I cannot recollect that too good.
12	Q I see. All right.
13	A Because I was based in Elmira, and I did not get in
14	touch with that many people at that time.
15	Q I see. All right. But I assume that you received some
16	type of a notification asking you to attend the meeting
17	of October 4th, did you?
18	A I would say so, since I was there and I had to know
19	about it.
20	Q Do you have any independent recollection about how you
21	were notified about it?
22	A Probably by the other crews in Elmira.
23	Q By other crews?
24	A Yes, by the other crews that were based in Elmira.
25	Q At that meeting I think that you have already indicated

1 to us that Mr. Winston spoke, and then Mr. Bell, spoke, 2 would that be right? A Right. 3 And Mr. Winston spoke first, did he? 5 Yes, sir. And did you tell us that he gave a discussion of the 6 company both before that time, and the future of the 7 8 company, and would that be substantially right? 9 Right. 10 And did he speak at some length? 11 Yes, sir. 12 Would you say he spoke for perhaps a half hour or there-13 abouts? 14 Maybe longer. 15 Maybe longer. Now, part of the talk that he gave, was 16 he apparently reading from some statement, did you happen 17 to observe? 18 That particular meeting I cannot remember if he read 19 from a statement. I have seen him read from statements 20 before, and I have also seen him not reading from 21 statements. 22 But you have no specific recollection? 23 No. 24 All right. But when he completed whatever he had to say, 25 then Mr. Bell spoke, would that be right?

- A Right, sir.
- 2 Q And was Mr. Bell's talk a comparatively short one?
- A It was very short, compared to Mr. Winston.
- All right. Now, at the co-pilots' meeting it develops that somebody taped the talk that was given at the co-pilots' meeting. Have you ever had an opportunity to hear that tape, Mr. Solberg?
 - A I never knew about the tape before shortly before this trial, and I heard part of it in Mr. Richards' office.
- 10 Q I see, all right.

8

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- And I think we played through part of what -- what Ted said.
- So that -- well, do I understand this correctly that

 since you have been up here in Auburn, during the trial,

 you did listen to the tape which contained some, at least

 of what Mr. Winston said and some of what Mr. Bell said?

 A I have not listened to the tape. I probably listened to

 a couple of words, because I was advised that I was a
- captain, and I wasn't in on that meeting that was taped.
 - Q And the reason that I am asking you if you heard it --
- 21 A (Interrupting, No, sir I never heard it.
- I wondered if you could tell us if what Mr. Winston said
 as it appeared on the tape, and what he said at the
 captains' meeting that you went to, was substantially

- 1		
1	A	Well, you know, I haven't listened to that tape, and
2		I still haven't listened to it, and I haven't even read
3		the statement because I was advised that it was not for
4		me, and I was a captain at that time.
5	Q	Well, so that you never heard the tape played in its
6		entirety?
7	A	No.
8	Q	And did you hear the portion of the tape that contained
9		what Mr. Bell said?
10	A	I heard part of it when I was in Mr. Richards' office.
11	Q	Only part of that?
12	A	Yes. I think it was, it might have been the last part,
13		I think.
14	Q	I see. So that you are not in a position to tell us
15		whether the remarks that were made by Mr. Winston and
16		Mr. Bell at the pilots' meeting that you were at, were
17		substantially the same as the remarks that were made
18		that are on the tape?
19	A	Honestly, I cannot.
20	Q	All right. I thought that maybe you could, and that
21		that would be a shorter way of going at it. Okay.
22		But you tell us that your recollection
23		of what Mr. Bell said, at the pilots' meeting, at the
24		captains' meeting, I should say, was something to the
25	Canada Ca	effect that, 'I realize some of you had bad days and

1 didn't feel up to it,' and was that it in substance? That is my recollection, yes. 2 And that if the union gets in, this would be no longer Q 3 tolerated? Did I quote that --(Interrupting) Well, I --A 5 (Interrupting) I think I quoted that correctly. Q No, sir, when this was stated it was said in a manner A that some of you had bad days, and you didn't feel up 8 to flying with me. 9 Q Yes. 10 And if the union gets in, this will no longer be tolerated. 11 I can't hear you. 12 I realize that some of you have had bad days and really 13 didn't feel up to it, flying with me, and if the union 14 gets in, this will no longer be tolerated. This is not 15 exactly word for word, but this is to the best that I 16 can recollect. 17 Now, that meeting, Mr. Solberg, was way back in October 18 of 1974, and I suppose that when you are telling us about 19 it here today, you are relying on your recollection, 20 would that be it? 21 I think pretty near two years after, that would be it. 22 So that you are not attempting to tell us word for word 23 what was said? 24 I could not tell you word by word. 25

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And what you had told us is your best recollection at 0 2 the present time, would that be it? 3 Yes, sir. Okay. Now, let me ask you this: was that the only group meeting that you attended, and I mean by that, you 5 have told us about going to Mr. Winston's office, but was that the only group meeting where all of the captains 8 were present? Do you mean together with -- with Mr. Bell, and --9 (Interrupting) Yes, sir, and Mr. Winston? 10 11 With Jerry Winston? Yes. I wasn't taking about a union meeting, but a 12 meeting with Mr. Bell or Mr. Winston, or both of them 13 were present? 14 To the best of my recollection, yes. You know, it was -15 A (Interrupting) There has been some testimony, Mr. Solberg, 16 that there was a second meeting, or a second occasion 17 when Mr. Winston spoke to some employees and that that 18 meeting took place two weeks later on October 19th, of 19 1974. Do you recall such a meeting, or were you present 20 21 at such a meeting? 22 Honestly, I can't remember. I see. All right. Now, when you talked to Mr. Winston 23 at his office on the subject of your ballot, Mr. Bell

was not there then?

24

- A Not the first time.
- Now, you indicated that you had some conversation with

 Mr. Winston where he reviewed and again talked about the
- 4 company and future, would that be right?
- 5 A Yes.
- And I take it that that may have been a fairly lengthy talk, was it?
- 8 A It was fairly lengthy.
- 9 Q Fifteen minutes or such a matter?
- 10 A No, I would say half an hour or forty-five minutes.
- 11 Q Half an hour. Now, is that the occasion that you say
 12 that Mr. Bell was no present?
- 13 A He was not present.
- 14 Q He was not there then, all right. Now, I think that you
- indicated that there was another day when you were
- in the office, and Mr. Winston brought up the subject
- of your ballot, again?
- 18 A Yes, I didn't give it to him yet.
- 19 Q Well, r erring now to that occasion, was Mr. Bell there
- 20 then?
- 21 A Not that time. The second time when I told Mr. Winston
- I had my second ballot, Mr. Bell was there.
- 23 Q I see.
- 24 And he was sitting, working right as his desk.
- 25 Q And let me ask you: did Mr. Bell take part in that

1		conversation, Mr. Solberg?
2	A	Not right then. He did not take part in that conversation
3		because he was working. As far as I can remember, he
4		kept on working.
5	Q	Then I think that, Mr. Solberg, you also mentioned
6		a conversation that you said took place with Mr. Bell
7		in an airplane?
8	A	Right, sir.
9	Q	And did that I think that you placed it as being
10		about or within a week of the time that Mr. Larimore
11		was discharged?
12	A	To the best of my recollection is was very shortly
13		before Larimore got fired.
14	Q	And this was an occasion when you were taxiing an
15		aircraft?
16	A	No, sir, I was just parking my airplane on a ramp.
17	Q	I see.
18	A	And I had to walk to another one, and Ted and I, we met
19		sort of, and he was walking toward one flight and I was
20		walking toward the other flight.
21	Q	I see. Now, you had just come in on a flight, was that
22		was had happened?
23	A	Yes.
24	Q	And was Larimore flying with you on that flight?
25	A	Larian re was flying with me. He was waiting at the

1 terminal, and I was going to meet him about five minutes after that. And you were going out together on a flight? Q 3 A Right, sir. And the flight that you had just completed, had Larimore 5 been with you? 6 A No, sir. 7 So another co-pilot was at that point? Q 8 To my recollection, yes. 9 A And I think that you told Mr. Chalenski, with reference 10 to that conversation that Mr. Bell passed the remark 11 that Larimore was a little to vocal? 12 In his support for the union. A 13 Well, what did he say? Q 14 This is to the best of my recollection, again. He said 15 it was on a friendly basis, and why don't you talk to 16 Larimore a little bit because I think that he is showing 17 his support for the union by being vocal about it. 18 Because there was -- everybody knew that if you supported 19 the union, you had to be quiet about it. 20 Well, now, have you completely told us what you say Bell Q 21 said to you on that occasion? That is what I am trying 22 to get at, and not your thought about it, but what did 23 he say? 24 It was very short.

1 Well, what were his words, if you can tell us? Q To the best of my recollection, 'Why don't you have a little talk with Larimore -- Dennis Larimore because 3 he is showing a little bit -- he is a little bit to voca about his support for the union. ' Did he say that he was to vocal about his support 7 union or to vocal on some other subject? 8 He said he was to vocal on his support for the union. Those were his words, would that be right? 10 Yes, sir. 11 And what did you say to Mr. Bell in response to that? 12 I would talk to him. 13 And did you talk to Larimore? 14 Yes. 15 Now, when did you talk to him? I talked to him, because I was flying with him. 16 17 That same day? 18 That same flight. 19 And was there any further talk that you had with Bell 20 concerning Larimore? 21 Not to my knowledge. Between that time and the time that Larimore was dis 23 charged?

Not to my recollection.

24

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And after Larimore had been discharged, did you again

1	talk to Bell concerning Larimore, so far as you can
2	recall?
3	A No, sir, not up to a couple of weeks ago.
4	Q I see.
5	MR. SHANAHAN: Okay, thank you.
6	MR. CHALENSKI: I have just one question,
7	Your Honor.
8	RE-DIRECT EXAMINATION
9	BY MR. CHALENSKI:
10	Q Mr. Solberg, I am going to read a portion of the tran-
11	script from Government's Exhibit thirty-three(a), re-
12	marks which the Defendant Bell made at the meeting of
13	October 5th, 1974.
14	People know that I have bent some rules
15	and done that for people because I had faith in them
16	as people and professionals and because I believed in
17	it and I still believe in them, but we have got this
18	thing coming up and I am sincerely expecting your
19	support.
20	Is that substantially similar to the
21	statement which you heard the Defendant Bell make the
22	morning of October 5th, 1974?
23	A No, sir.
24	MR. CHALENSKI: Thank you, Mr. Solberg.
25	RE-CROSS EYAMINATION

1	BY MR. RICHARDS:
2	Q How did you vote, by the way, in the election?
3	A I sent my ballot in.
4	Q How did you vote? For or against the union?
5	A I voted for the union.
6	Q One more question, Mr. Solberg: at the time the Elmira
7	flight comes into Broome County, for the last leg to
8	Elmira, is it unusual for the company to change aircraft
9	depending upon the number of passengers to go to Elmira?
10	A No, sir.
11	MR. CHALENSKI: No further questions.
12	THE COURT: You are excused.
13	(Whereupon, the witness was excused.)
14	THE COURT: We will take our luncheon
15	recess and don't talk about the case.
16	(Whereupon, the Jury was excused.)
17	THE CLERK: Court stands in recess.
18	(Whereupon, the proceedings were
19	recessed for a luncheon break.)
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21	
22	
23	
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1	AFTERNOON RESSION 1:30 p.m.
2	THE COURT: Gentlemen, please proceed.
3	MR. CHALENSKI: The Government calls,
4	for its next witness, Mr. Paul Briggs.
5	PAUL E. BRIGGS
6	Called as a witness, being first duly sworn, was
7	examined and testified as follows:
8	DIRECT EXAMINATION
9	BY MR. CHALENSKI:
10	Q What is your present occupation?
11	A I am a pilot.
12	Q And where do you reside?
13	A Lakeland, Florida.
14	Q And were you employed by the Defendant Broome County
15	Aviation and Commuter Airlines?
16	A Yes, I was.
17	Q And what was your dates of employment?
18	A September, 1970 until August, 1976.
19	Q Do you mean 1975?
20	A Yes, 1975, I am sorry.
21	THE CLERK: Government's Exhibit thirty-
22	seven, marked for identification.
23	(Document marked Government's Exhibit
24	thirty-seven for identification.)
25	BY MR. CHALENSKI:

1 Q During the course of your employment with the Defendant, 2 do you recall attending a meeting on Saturday morning, 3 October 5th, 1974 at which the Defendants Winston and 4 Bell spoke to pilots of the company? 5 I do. 6 And who was present at that meeting? Was it just the captains of the company? 8 Just the captains, and Mr. Bell and Mr. Winston. 9 And can you tell the Jury want you recall that Mr. Winston 10 said at that meeting? 11 He told us of his feelings about the union: what the 12 company had to offer, and what the union had to offer, 13 and what they were attempting to do, in his opinion. 14 And further he spoke about the benefits that the company 15 had to offer to the pilots, and he went over the union activities that had preceded four or five years ago, 16 17 1970. I believe it was. 18 Does that pretty well cover it? 19 Pretty well. And do you recall whether the Defendant Bell spoke at 20 21 that meeting? 22 He did. And would you tell us what the Defendant Bell said? 23 Along about the same lines of Mr. Winston, to the best 24 of my recollection. However, one statement sticks in my 25

1		mind: he said that , as I remember it, in the past we
2		have overlooked when pilots have had bad days and so
3		forth on check rides, and in the future he would take
4		a closer look at pilots' performance.
5	Q	Now, at the time of that meeting, that is October 5th,
6		1974, who were the check pilous for the company?
7	A	Mr. Bell and myself.
8	Q.	Anybody else?
9	A	No, sir.
10	Q	I show you Government's Exhibit number thirty-seven for
11		identification, which is the letter dated May 18th, 1973
12		to Commuter Airlines from George A. Stedman, Chief of
13		the Federal Aviation Administration, and is that the
14		letter in which you were designated as a check pilot
15		for Commuter Airlines?
16	A	Yes, sir.
17	Q	And that is dated May 18th, 1973?
18	A	Yes.
19		MR. SHANAHAN: What was that date?
20		MR. CHALENSKI: May 18th, 1973.
21	BY I	MR. CHALENSKI:
22	Q	Now, did you, following the meeting of October 5th,
23		1974, remain a check pilot for Commuter Airlines?
24	А	It was never renewed. It came up that following spring,
25		and it just never was renewed.

,	Q	Can you recall, as specifically as you can, when the
2		prior when your status as a person who may give
3		check rides was finished?
4	A	I just wasn't given any more pilots to check out, or
5		to train in any new equipment.
6		MR. SHANAHAN: I move to strike that out
7		as not being responsive.
8		THE COURT: Yes, strike it.
9	BY	MR. CHALENSKI:
10	Q	Did your status as a check pilot with the company, as
11		far as the F.A.A. was concerned, ever lapse?
12	А	Yes.
13	Q	And do you recall the date that it lapsed?
14	A	No, I don't.
15	Q	Can you
16	A	(Interrupting) It was not renewed. When my check
17		ride with the F.A.A. came up, it just wasn't given.
18	Q	Do you recall when your check ride with the P.A.A.
19		became due?
20	A	That would be November of that year, the same year.
21	Q	November of 1974?
22	А	Right.
23	Q	And following that date, November of 1974, did you
24		check out or conduct check rides for any pilots
25		of the Defendant?

A Not to my recollection. 1 Now, what are your duties as sheck pilot for the Q 2 Federal Aviation Administration? 3 Primarily to check a pilot's proficiency and captains A have to undergo what they call a six-month check every 5 six calendar months, and it is my job to ride along with 6 them and see if they are performing their duties 7 satisfactorily, and if they are not, to bring out any 8 weak points and either pass or fail them. 9 On a satisfactory or an unsatisfactory basis? 10 Yes, satisfactory or unsatisfactory basis. 11 Q Did you have any meetings, individually, with either 12 the Defendants. Winston or Bell, relative to the 13 organizational activities, prior to the election? 14 I had a meeting with Mr. Winston. A 15 Q And what did he say, and what did you say during the 16 course of that meeting? 17 A He wanted to know my views on the union, and he reiterated 18 the benefits that the company had to offer. He mentioned 19 some of the things that were in the future for the 20 company that I may take part in and he asked me for my 21 ballot as I was leaving. 22 Do you recall what specific words he used concerning your 23 ballot? 24

As I was leaving the office, he asked me again how I

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1		was going to vote how I was going to vote, and I
2		don't remember my exact words. To the best of my
3		recollection it was 'Don't worry about it,' or something
4		like that.
5		He said, 'I know that there is one way in
6		which you can not vote for the union, and I said, How
7		is that,' and he said, 'If you give me your ballot.'
8		Then I said, 'Won't you get in trouble
9		doing that?'
10		Then he said, 'Don't worry about it.'
11	Q	Did you give your ballot to Mr.Winston?
12	A	Yes, I did.
13	Q	And at that meeting?
14	A	No.
15	Q	Shortly afterwards?
16	A	My father died about that time, and I was going for a
17		week or so, and when I came back, he asked me for my
18		ballot then as I walked in the office, and I gave it to
19		him then.
20	Q	Did there come a time when you recieved the second ballot
21		from the National Mediation Board?
22	А	Yes.
23	Q	And what did you do with that second ballot?
24	A	I marked it and sent it in.
25	િર	Can you tell the Jury whether the following pilots of

1		Commuter Airlines were satisfactory pilots or not, in	
2		your opinion: Robert Slough?	
3	A	Satisfactory.	
4	Q	Ira Josephson?	
5	A	Satisfactory.	
6	Q	Michael Baan?	
7	A	I never knew Mr. Michael Baan.	
8	Q ·	Paul Sholl.	
9	A	Satisfactory.	
10	Q	Mr. Lamos?	
11	A	Satisfactory.	
12	Q	Ron Williams?	
13	A	Satisfactory.	
14	Q	Dennis Larimore.	
15	A	Satisfactory.	
16	Q	Mr. James Hummell?	
17	A	Satisfactory.	
18	Q	In your experience, did any one of the Defendants ever	
19		test fly an airplane on a fifteen minute rest stop?	
20	A	Would you repeat that?	
21	Q	Did anyone was anyone in your experience ever require	1
22		to test fly an airplane by the Defendant, during a	
23		fifteen minute rest stop?	
24	A	Yes, sir. /	
25	Q	And who?	

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1	A	Bill Lamos comes to mind.
2	Q	Anybody else?
3	A	Not that I can remember.
4	Q	Were you ever asked to fly an airplane on a fifteen
5		minute stop?
6	A	No.
7	Q	And was Bill Lamos asked to do that on more than one
8		occasion?
9	A	I don't know.
10	Q	You know of one occasion?
11	Α .	I know of one occasion.
12	Q	In your experience with the Defendant, are you aware
13 ,		of any requirements that co-pilots must obtain their
14		Airline Tranport Rating to remain a co-pilot?
15		MR. SHANAHAN: Would you repeat that
16		question?
17	BY	MR. CHALENSKI:
18	Q	In your experience with the Defendants, are you aware
19		of any requirement that co-pilots have to obtain their
20		Airline Tranport Rating as a condition of remaining
21		in amployment?
22	A	Ne, sir.
23	Q	How long did it take you to get your uniform, after you
24		came with the Defendants?
25	A	I would say about two and a half years not quite two

, 1 and a half years. It was over two years. You were an instructor for ground school with the Q 2 Defendant during the course of your employment? 3 A Yes, sir. And do you recall giving instruction to Paul Sholl in 5 2 6 ground school? 7 A Yes, sir. 8 And did you give him instruction in the opening of doors Q 9 on the Metro planes? 10 A Yes, sir. And can you tell the Jury what instructions you gave 11 Paul Sholl regarding opening of those doors? 12 I told him to be careful in opening the door as far as 13 A opening the door. I told him to be careful as I had had 14 a door open on me, and it was damaged, and I gave --15 instructions in closing the door in relation to the 16 17 mechanism that we called the 'click' latch, which was very fragile and I stressed this primarily. 18 Did you describe a technique for opening the door on 19 Q 20 the Metro? 21 Could I describe one. 22 Did you, during the course of your ground school instruction? Q 23 A Yes, sir. 24 And could you, as best you can tell the Jury what technique Q 25 you told the pilots to follow in the ground school?

1	A	I told them to open the door with the handle, naturally,
2		and ease the door out, holding or the chain, and bracing
3		yourself so that you didn't go out with it, and to let
4		it down until the snubber was engaged, and then let the
5		door down naturally.
6	२	Now, prior to that instruction, did you have occasion
7		when a snubber failed on you?
8	A	Would you say that again.
9	Q	Prior to that instruction at ground school, had you had
10		an occasion where the snubber failed on you?
11	A	Yes, sir.
12	Q	And when did that take place?
13	A	To the best of my recollection, I would say about the
14		first or second week of March.
15	Q	19
16	A	(Interrupting) ! don't remember the year, but it was
17		prior to giving Mr. Shell instruction.
18	Q	And would it have been within two or three months of
19		giving him instruction?
20	A	I don't remember. I don't remember when I gave him the
21		instruction to Mr. Sholl.
22	Q	Mr. Sholl testified that he was employed by the Defendants
23		during March or February of 1974. Does that refresh
24		your recollection as to when the snubber would have
25		failed on you?

1	A	I am pretty sure mine failed the first part of March.
2		His training, as I remember it, took place sometime
3		in the summer, or something like that. I just can't
4		remember.
5	Q	It would have failed you in about March of 1974?
6	A	Right.
7	વ	And can you describe how you opened the door when the
8		snubber failed?
9	A	I was standing on the outside of the door, and when you
10		are standing on the outside, you put your left hand up
11		on the door, and I used my right hand to open the lever
12		and as I opened the door, the door sort of sprung out
13		on me, and in self defense, I just stepped to the side
14	2	and it hit me on the shoulder, and went down and was
15		damaged.
16	Q	How heavy is the door on the Metro?
17	A	I don't know the exact weight, but it is heavy.
18	Q	Had you not stepped aside, would you have been injured?
19	A	I think so.
20		MR. RICHARDS: I will object. It is
21		speculative.
22		THE COURT: Overruled.
23	BY	MR. CHALENSKI:
24	a	What was the result of the door falling at that time?
25	A	It damaged it quite severely.

1 Q Now, following that incident, did you have occasion to 2 open the door on the Metro? 3 A Yes, sir. Q How often? 5 A Several times a day. 6 Q Now, under the circumstances under which you opened the 7 door on the Metro on the those succeeding occasions. 8 if the snubber had failed, would you render an opinion 9 as to whether you would have been able to keep the door 10 from free falling? 11 If I was on the inside of the airplane, I don't think so 12 Q You would have not been able to keep the door from free-13 falling, is that your answer? 14 No. sir. A 15 And your answer is that you would not have been able to 16 keep the door from free-falling, is that correct? 17 Yes, sir. A 18 Q Mr. Briggs, I am going to read to you the names of some 19 pilots who were terminated in the employ of the Defendant 20 during the years 1971, and up until October 2 of 1974. 21 Can you tell me whether you know whether they quit, 22 whether they were fired, or whether they were laid off 23 or that you just don't know anything for sure. Robert 24 H111?

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Don't know.

- 1 Q John Howd?
- 2 A No, I don't know him.
- 3 Q Oscar Keifer?
- 4 A He was -- thr is not pronounced right, but he was laid
- 5 off.
- 6 Q Richard Knipe?
- 7 A He quit.
- 8 Q Harold Laufler?
- 9 A I don't know him.
- 10 | Q Stanley Feld?
- 11 A He quit.
- 12 Q Thomas Shay?
- 13 A He quit.
- 14 Q Jan Smith?
- 15 A I don't know, I think that he was fired. I am not sure.
- 16 Q V. Stromberg?
- 17 A He was fired.
- 18 Q George Uhrin?
- 19 A He quit.
- 20 Q H. Wagner?
- 21 A He quit.
- 22 Q Lance Whitney?
- 23 A He quit.
- 24 Q And for the year 1972 -- those are all 1971, and for
- 25 the year 1972, John Cheek?

1	A	He quit.
2	Q	George Fitzgibbons?
3	A	Quit.
4	Q	James Lindsey?
5	A	Quit.
6	Q	Don Meyer?
7	A	Fired, I believe.
8	Q	George Monk?
9	A	Quit.
10	۹ .	William Ogden?
11	А	Quit.
12	Q	John O'Neil?
13	A	He was fired, I believe.
14	Q	Fred Reiser?
15	A	He was more or less laid off. He was a part time.
16	Q	Stephen Schuyler?
17	A	I don't know. I think he quit.
18	Q	And Dan Smith?
19	A	He was either fired or laid off. Laid off would be a
20		good word for him, I think.
21	Q	And in 1973, Gregory Favereau?
22	A	He was fired.
23	Q	Ralph Tyler?
24	A	I think he was fired, also.
25	Q	Theodore Fromer?

-	1	
1	A	He quit.
2	Q	Lance Whitney?
3	A	Quit.
4	Q	Ira Williams?
5	A	Quit.
6	Q	Nathan Yahuda?
7	A	Took a leave of absence, I believe, or never came back
8		or something.
9	Q	And in 1974, David Carr?
10	A	He quit.
11	Q	William Doris?
12	A	He quit.
13	Q	Roy Johnson?
14	А	He quit.
15	Q	Ivar Ore?
16	A	He quit.
17	Q	Rand Peck?
18	A.	He quit.
19	Q	And Russell Shea?
20	A	He quit.
21		MR. CHALENSKI: Thank you, Mr. Briggs.
22		CROSS EXAMINATION
23	BY MI	R. RICHARDS:
24	Q	Mr. Briggs, I gather from your direct testimony that
25		you were aware of a requirement made of a pilot by the

1		name of William Lamos to test fly an airplane and were
2		you familiar with that request made by the company?
3	A	Yes.
4	Q	And as a matter of fact, do you know who test flew that
5		airplane?
6	A	No, I do not.
7	Q	Do you recall being called by the office at your home
8		and to request you to come to the airport to test fly
9		an aircraft?
10	A	No, I don't.
11	Q	You have no recollection of that. Where a pilot is
12		required to test fly an airplane at Commuter, would his
13		first step be to contact someone from the maintenance
14		as to the type of work that was done on the aircraft?
15	A	Yes.
16	Q	And he would check with this person in order to determine
17		the type of test that would be required of the aircraft?
18	A	Yes, sir.
19	Q	And was it the company policy at that time, that if there
20		were any work done on the cylinders of these aircraft,
21		it would be test flown before it could be used by
22		passengers before use with passengers?
23	A	Yes.
24	Q	Now, with regard to the door on the Metro, if I under-
25		stand your direct examination, at one time you had a

1 a problem with the door where it had free-fallen on you, 2 is that correct? 3 Yes, sir. And at that time you were standing on the outside of the 5 aircraft? 6 Yes. 7 And if I recall, you had your right hand on the handle, 8 is that what happened? 0 A Yes. 10 Q And you turned the handle and then what happened? 11 A The door just seemed to come out at me. 12 In the ground school training, how did you instruct the 13 pilots as to the Metro, on how to open the door when 14 you are standing on the outside of the Metro? 15 I told them to put or place their hand as I had, their A 16 left hand on the door, slightly to the left and above 17 the handle which would be a natural position, and to 18 use your right hand to operate the lever, and as the door 19 came out, to let it down until the snubber was engaged, and then stand aside and let the door come down by itself. 20 21 And what would be the reason for that policy to place Q 22 his left hand on the door, itself? 23 Well, just to hold it there. A 24 In the event that the snubber system should fail? Q 25 A Yes.

1 Q And then, he could merely ease the door down so that it would not free-fall? 2 He could ease it down until the snubber became engaged, 3 and then step aside and let the door come down naturally 4 5 Now, you don't really have any idea as to the weight of 6 this docr. do you? 7 No. I don't. 8 Could it be as little as twenty or thirty pounds? 9 No, sir. 10 Do you think it is heavier than that? 11 A Oh, yes. 12 Well, how much heavier could you tell us? 13 Well, I never picked one up by i self. I have no idea. 14 I would say about one hundred punda, maybe. 15 Q Now, if I understand you correctly, in your training 16 at the ground school, you instructed the pilots that when 17 they opened the door, they should have their left hand 18 on the guard shaft, was that correct? 19 A Say that again? 20 In your ground school training, you instructed the pilots, when they opened the door of the Metro, they 21 22 should have their left hand on the guard chain? 23 A Yes, sir. 24 the reason for this would be that in the event that Q the snubber system failed that they could ease the door 25

1		down without having it free-fall?
2	A	Yes, sir. I told them of my experience with the door,
3		and I told them to be careful of that.
4	٩	Incidently, following your incident, did you review the
5		snubber and the snubber handle, when it almost fell on
6		you?
7	A	Yes, I was interested in it, and I
8	Q	(Interrupting) Was the snubber handle intact?
9	A	As I recall, yes.
10	Q	And it wasn't broken in any sort of pieces, was it?
11	А	No, sir.
12	Q	And did you determine from maintenance whether the
13		snubber system was functioning properly on the aircraft
14		in which you had this incident?
15	A	As I remember, I believe the nut that holds the assembly
16		to ether on the bottom had either worked off or the
17		threads had become stripped in some fashion.
18	Q	So in effect, the snubber system wasn't working at all,
19		is that correct?
20	A	Yes, sir.
21	Q	Now, incidently, the door actually free-fell, or were
22		you able to check the flight of that door as it came
23		down?
24	A	I checked it with my shoulder, inadvertently.
25	Q	Do you know whether the door was twisted after it was

1 inspected by you or maintenance? 2 Do I know that it was twisted? 3 Q Yes. No, sir, I don't. I believe that the hinge was broken. 4 I am not sure. The hinge had broken on one end, as I 5 6 remember, from constant use. 7 Q Now, I take it that during the time that you were 8 employed by Commuter, you would open the door of the Metro several times a day, is that correct? 9 10 A Usually in actual practice, the captain opened the door 11 possibly from the outside. In actual use in the day, 12 as your flight progressed, the co-pilc opened the door 13 more than the captain did. 14 2 Apart from the circumstances which you have already 15 related about a door free-falling when you were on the 16 outside, was there ever an occasion when you opened a 17 Metro door from the inside and the snubber system failed 18 Not with me, no, sir. Was it ever reported to you by any other pilot? Q 19 20 Yes, sir. A 21 And which pilot? 22 A Just Sholl and Mike Kleitz. 23 Any other incident? 24 No. sir. A 25 Q Wasn't there one other?

1	
A	Yes, one of er.
Q	And who was that?
А	That was Gary Leonard.
Q	And that was in 1974?
A	No, sir.
Q	When was that, if you recall?
А	About two or three weeks ago
Q	I see. Now, you indicated that it took you some two and
	a half years to get your uniform, is that correct?
Α.	Yes, sir.
Q	Now, as a matter of fact, isn't it two and a half years
	that you were really riding mail, weren't you?
A	Yes, sir, but I was flying passengers quite often.
Q	And if you have the mail route, you are not required to
	have a uniform, isn't that correct?
A	Yes, sir.
Q	You didn't have any responsibility with the company about
	getting uniforms for new employees coming on the payroll
	did you?
A	No, cir.
Q	Now, when you went in to see Mr. Winston regarding your
	ballot, did you have any comments to make, yourself,
	about union activity?
A	Yes.
Q	And did you indicate to him at that time that you,
	Q A Q A Q A Q A Q A Q A Q

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1		yourself, were opposed to a union?
2	A	Yes.
3	Q	And did you volunteer this information without Mr. Winston
4		having spoken to you?
5	A	Yes.
6	Q	And isn't it a fact that after you returned from your
7		trip that when you the ballot that you returned to
8		Mr. Winston was taken into his office, and Winston was
9		not there?
10	A	Could you repeat that, please?
11	Q	When you turned the ballot over to Mr. Winston, did you
12		turn it over to him personally?
13	A	Yes, sir.
14	Q	You don't recall coming into the office and laying the
15		ballot on Mr. Winston's desk when he was not there?
16	A	No, sir. In fact, I gave it to him as he was standing
17		outside in the office, itself.
18	Q	Did you have occasion to attend any union meetings in
19		the fall of 1974?
20	A	Yes, sir.
21	Q	And at these meetings was there any discussions about
22		costing the company money?
23	A	Yes.
24	Q	And did these discussions involve various ways in which
20		you would cost the company money by operating the aircraft?

1	A	Yes, sir.	
2	Q	And what ways were discussed?	
3 .	A	Going by the book.	
4	Q	And when you say 'going by the book,' what do you mean	
5		by that?	
6	A	Operating in a legal manner, taking enough fuel for the	
7		flight as required by the weather, bumping passengers	
8		when necessary to take on extra fuel. Then going I.F.R.	
9		instead of going V.F.R., and trying to take short cuts.	
10	વ .	Was there any discussion at these meetings about overuse	
11		of brakes of aircraft?	
12	A	No, sir.	
13	٩	Or putting excessive strain upon the cylinders of the	
14		aircraft?	_
15	A	No, sir.	
16	Q	Or using inactive runways in a metropolitan area?	
17	A	Yes, that was part of going by the book.	
18	Q	Well, let me get into that. As I understand it, there	
19		was certain runways in the metropolitan airports designat	ed
20		for Commuter Airlines, is that correct?	
21	A	Not necessarily. I don't know if you mean designated	
22		runways, for Commuter? No, sir.	
23	Q	I mean there are certain runways, at either LaGuardia	
24		or Kennedy Airports which the Commuter airplanes had	
25		to use to pay the normal landing fee and in the event	

1	that they did not use there
	that they did not use those runways, and used other
2	runways, they would have to pay a greater fee, and are
3	you familiar with that?
4	A Well, how would I guess you could well, your
5	wording 'designated', it was the inactive runways. If
6	you use an inactive runway, then you qualified for the
7	lesser landing fee, as I understand it.
8	Q And was it the company instructions that wherever possib
9	the pilot should use these inactive runways?
10	A Yes, sir.
11	Q And in the course of the discussions at these meetings,
12	did the pilots consider using the active, as opposed to
13	the inactive?
14	MR. CHALENSKI: May we fix a date for -
15	these meetings?
16	THE COURT: Could you fix a time?
17	BY MR. RICHARDS:
18	Q can you recall when these meetings were held, Mr. Briggs
19	A I can't recall the exact days, but they were during the
20	fall and winter of 1974 or 1975.
21	Q Sometime between October of 1974 until, say, March of
22	1975?
23	A Yes, sir.
	A les, sir.
24	Q And again, I ask you if you can recall the pilots at
25	one of these meetings discussing using active runways

1		at the Metropolitan airports?
2	A	Not to my recollection, no, sir.
3	Q	You can't recall them discussing that at all?
4	A	No, in fact no, I can't.
5		MR. RICHARDS: I have no further questions
6	BY	MR. SHANAHAN:
7	Q	Mr. Briggs, you tell us that you were approved as a check
8		pilot in May of 1973, would that be right?
9	А	Yes, sir.
10	Q	And that was an approval by the Federal Aviation
11		Administration?
12	A	Yes, sir.
13	Q	And that approval authorized you to give check rides
14		to both pilots and co-pilots?
15	A	Yes, sir.
16	Q	Would that be so. The pilots or captains were required
17		to take one every six months?
18	A	Every six calendar months, yes.
19	Q	And every six calendar months. And were there different
20		requirements as far as some co-pilots were concerned?
21	A	Once a year.
22	Q	And would that be once during a calendar year?
23	A	Yes.
24	Q	And the purpose of that was to check the proficiency
25		of the pilot, or the co-pilot, depending upon whom you

1 were testing, would that be right? 2 Yes, sir. Now, are there check flights for a co-pilot and a captain 3 Q 4 are they the same thing? 5 A No. sir. 6 2 There is a difference in the procedures that a captain is 7 put through, as distinguished from the procedure that 8 the co-pilot is? 9 A Yes, sir. 10 0 And I would rather assume that perhaps the captains' 11 check flight is a longer check, is it? 12 A Yes, sir. 13 0 Or a completer check? Ordinarily it would be, yes, sir. 14 A 15 And what is the major difference, if you could explain 16 it to us, between a co-pilot check flight and a pilot 17 check flight? 18 A A co-pilot check, I would take the individual out, and 19 we would fly the airplane, doing turns and so forth. 20 and review the stall procedures, the emergency procedures 21 such as engine-out, gear failure, and perhaps come in 22 and shoot one approach, and possibly three or four 23 landings. 24 Possibly what? Q 25 Three or four landings.

1 Q I see. Thatis for a co-pilot? A Yes, sir. 3 Q And now for a captain? 4 For a captain, the same thing, only he was required to A 5 shoot a different one, for each type of approach. That would be four or five different types of approaches. He 6 7 would have to shoot every one of them, and if I thought 8 that perhaps he had not performed satisfactorily, I 9 would have him do that type of an approach again. 10 Q And now, are you equipped with some type of a list of 11 the various matters that you check in both the co-pilots 12 and the captains' check flights? 13 A You just take the same for both. Yes, for both. 14 And this is a printed form, is it? 15 A Yes. 16 0 And is that something that is supplied to you by the 17 Federal Aviation Administration? 18 Yes, sir. A 19 Q And does that listing that is made available to you 20 for check flights indicate to you the various procedures 21 that you should put the captains through, and the 22 various procedures that you should put the co-pilots 23 - through?

U.S. COURT REPORTERS
FEDERAL BUILDING

All right. Now, in connection with these various

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Yes, sir.

procedures that are listed on this paper that you have, 1 do you indicate as you give the test, whether the 2 performance of the people that you are testing is 3 satisfactory, or unsatisfactory? 4 A Yes, sir. 5 On each of the various procedures that are listed, would Q 6 that be so? 7 A Yes, sir. 8 So that in giving a check flight to a co-pilot it would Q 9 be necessary for you to have him perform each of the 10 procedures listed under whatever part of it deals with 11 the checking -- the proficiency of a co-pilot? 12 No, sir, because he wasn't required to do all of the A 13 things that we were going to check. 14 Q I beg your pardon? 15 He was not required to do everything that was on that A 16 check list. 17 Well, is there some way that you --Q 18 (Interrupting) It was usually -- you would usually, A 19 somewhere on that sheet, list that he was a co-pilot, 20 and either put down initially a co-pilot check or a 21 recurrent check, or whatever. Well, what I am getting at is this: well, let me ask Q 23 you this way that the various procedures that you 24 have a co-pilot perform, are there certain ones that 25

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1		you are required to put him through in a flight check,
2		or do you use your own judgement?
3	A	I use my own judgement, and there was a company policy
4		that we went by that was handed down to me from Mr. Bell.
5	Q	What was that company policy?
6	A	Just to take him out, and refamiliarize himself with the
7		airplane and review the operation of the aircraft systems
8		Possibly shoot one approach, especially on a recurrent
9		check. On an initial check, I don't think that the co-
10		pilots were required to shoot an approach, but on
11		recurrent we usually did, and shoot possibly for three
12		landings.
13	Q	Just so we get an understanding of it, and we are not
14		acquainted with all of this: would you, then, to some
15	The state of the s	extent use your own judgement in checking a co-pilot?
16	А	Yes, sir.
17	Q	As to what procedure you would require him to perform?
18	A	Yes, sir.
19	Q	And you were engaged in that type of work for at least
20		a couple of years, wouldn't that be so?
21	А	Yes, sir.
22	Q	Now, with reference to checking a captain, were there
23		certain mandatory requirements as to procedures that you
24		had to put the captain through?
25	A	Yes, sir, there was prescribed regulations.

1 Q That was prescribed regulations, and would it be true. 2 then, that each captain would get an identical checking? I would say identical would be -- yes, that would be 3 A 4 true. I am not saying that every check ride was the 5 same, or identical for every pilot, but the procedures 6 used were identical, yes. 7 And when you say that they are not always the same, 8 but the procedures used are the same, would you explain 9 it to us, please? 10 I would say that maybe I observed one pilot needed some 11 work on some certain area, and then I would have him 12 perform that again. Q Yes? And that is where each check ride would be different. 14 A 15 I see. If you felt that his proficiency was not --Q 16 satisfactory one hundred percent --17 (Interrupting) If he showed that he lacked knowledge in A 18 some certain area, then I would go over that a little 19 more thoroughly, yes. 20 I see. Now, if on a check ride you had such a situation 2 21 with a captain that you found displayed a lack of 22 complete proficiency in a certain area, would you have him repeat that procedure, would that be the idea? 23 24 A Yes, sir.

PEDERAL BUILDING

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And would you sometimes have him repeat it on more than

		020
1		one occasion?
2	A	You mean on the same check ride
3	Q	Yes, the same check ride?
4	Α .	Probably not. If you had to reivew it more than twice,
5		I would think I would take a closer look.
6	Q	You would take what?
7	A	You may have to take a closer look at his performance.
8	Q	I see. Well, then, he might appear to lack proficiency
9		on one occasion, and you would have him repeat that
10		particular procedure, and if he repeated it, and did it
11		satisfactory, that would serve the purpose would it?
12	A	Yes, sir.
13	Q	Now, on each of these procedures, do you grade him?
14	A	No, sir, not if you mean on a scale, no. It is either
15		satisfactory or unsatisfactory.
16	Q	Now, let's assume that we have a situation just as you
17		described to us, so we can see where this goes, where
18		you have a captain that you are not satisfied with on
19		his first performance of a procedure, and you have him
20		repeat it, and on the repeat effort it shows an
21		improvement?
22	A	Yes, sir.
23	Q	To the point where you are satisfied with it, and do
24		you grade him then as satisfactory for that particular
25		procedure?

- 1 A Yes, sir.
- 2 Q Do you grade him any differently than you would grade
 3 him if he had performed it satisfactorily the first time?
 - A No, sir. As I said, there is no scale of grading.
 - Q There is no intermediate marking, would that be it?
- 6 A Yes.

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- And it is either satisfactory or unsatisfactory?
- 8 A Yes.
- Now, if you had a situation on one of these check rides, Q 9 where the captain doesn't perform to your satisfaction, 10 and later repeats it, and does it fairly well, do you 11 mark him as satisfactory as a result of that second 12 effort, or do you sometimes then review that whole 13 procedure with him after the check ride is over, 14 with a view of improving his general performance in that 15 regard? 16
 - A Yes, sir.
 - And you consider that as some indication that he perhaps needed some more training, or some more advice or something of that nature?
 - A No. It is actually acting as a reminder. We all have lapses, and in a period of six months, you may develop a bad habit, or something that you don't even know, so that is my job to pick those out.
 - Q I see. All right. So that as you explain this to us,

1		Mr. Briggs, it would appear that giving this check to
2		a pilot, or even a co-pilot, you do have some discretion
3		in connection with it, would that be so?
4	A	Yes, sir.
5	Q	Now, in addition to that, when you are acting as a check
6		pilot, as you were for Committer Airlines, you are giving
7		these check rides to other captains, and co-pilots with
8		whom you had been working?
9	А	Yes, sir.
10	Q .	Day to day, would that be so?
11	A	Yes, sir.
12	Q	And you are acquainted with all of them?
13	A	Yes, sir.
14	Q	And on the other hand, when you are giving this check
15		procedure, you are really doing it on behalf of the
16		Federal Aviation Administration, wouldn't that be right?
17	A	Yes, & r, I am their representative.
18	Q	And you would, of course, want to do a good job in
19		performing that particular function for the F.A.A.?
20	A	Yes, sir.
21	Q	Now, let me ask you: when you complete one of these
22		check rides, do you file a report of your check ride
23		with the F.A.A.?
24	A	A copy of the check sheet, you might say, is well,
25		I keep one, and the F.A.A. gets one, and the company
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1 gets one and it goes in the pilots' folder. The pilot gets one as well? 2 Q 3 A No, sir. Q I see. 5 A He can have one if he wants one. 6 I see. But ordinarily we just make three copies. 8 Q At the end of one of these check rides, do you inform 9 the captain or the co-pilot, depending upon whom you 10 are checking, do you inform them verbally as to whether they passed or failed the test? How is that done? 11 Well, it is, I would say, rather informal. He knows 12 13 he passed it. 14 Q He knows he passed it? He knows if he has done a good job or a bad job. If 15 16 he has done a bad job, he didn't pass. 17 Of course, when this check flight, or when this checking 18 is being performed, the person that you are checking is actually operating the airplane, and you are sitting 19 20 next to him, is that ordinarily the way it happens? 21 A It depends on the check. I can act as co-pilot, and 22 take commands from him. 23 Q I see. 24 A And basically, we were on a two pilot operation, and

in actual practice, the check ride was given in two

1		different airplanes.
2	Q	That is each person is checked in two different
3	A	(Interrupting) Each captain let me repeat that
4		each captain is given a check, normally, in two different
5		airplanes. So some of the airplanes did not have auto-
6		matic pilots, and so to be able to fly a flight with a
7		single pilot, he had to have an automatic pilot check,
8		and so it would necessitate another check ride in
9		another airplane that had an automatic pilot.
10	Q	And that would be the same type of check ride procedure?
11	A	Yes, that would be the same.
12	Q	And under the circumstances that you just related to
13		us, it would be one check flight in one type of airplane,
14		and another check flight in another?
15	A	Yes.
16	Q	And would that also be true of co-pilots, Mr. Briggs?
17	A	No, sir.
18	Q	I see. All right, now, you have told us that you were
19		proved by the Federal Aviation Administration for this
20		type of work in May of 1973. Now, did I understand
21		that that appointment was for a certain period of time?
22	A	Until it is revoked. I don't know the exact wording
23		on that, but it is either I discontinue employment or
24	Q	(Interrupting) What I am getting at is , it is not
25		like a car registration that expires on a certain date?

1 A I would have to have it renewed. I have to take a check ride myself, every six months to renew, yes. 2 And for your check ride, who adminimers that? Q 3 4 The F.A.A. 5 0 So some representative of the Federal Aviation Admin-6 istration or agency would do it? 7 Α Yes. 8 And while we are on that subject, do those representatives 9 of the F.A.A. give a certain number, or are they present 10 at a certain number of check rides, themselves? I mean, 11 that is, the representative of a Federal Agency? 12 A Do you mean to ride along on a check ride? 13 Or to give the check ride, themselves? 14 I don't recall if F.A.A. ever gives a check ride to 15 anybody else, except Mr. Bell and myself. I see. Did they ever accompany -- did a representative 16 Q of that agency ever accompany you on a check ride that 17 18 you gave to somebody else? 19 Accompanied me once or twice as I remember, in order for 20 me to obtain that authorization. Is there some type of a rule that they are supposed to 21 Q perform one out of every six pilot checks, themselves? 22 23 I don't know, sir. A You are not aware of that? 0

I am not aware of that.

1 All right. Well, now, you indicated to Mr. Chalenski 2 if I heard it correctly that your authority to check pilots lapsed, or was allowed to lapse at some point. 3 When was that, again? 4 Well, when my -- as I just stated, I had to have a check 5 ride from the F.A.A. in order to keep that check pilot 6 authorization. When that time came, I was not given 7 a ride by the F.A.A. I was given a ride by Mr. Bell, 8 9 which more or less automatically took away my check pilot authorization. 10 Well, do you recall when that was, again? 11 Well, it would have had to have been, -- my check ride would have been due the next day, and I believe that 13 my check ride was given in the month of June. 14 That would be June of 1975? 15 Q Well. I am not sure of that year. It would either be 16 1974 or 1975. 17 In 1974 or 1975? 18 It would have to be 1975. 19 You were, according to what you indicated to us, Mr. Q 20 Briggs, you were with the company until August of 1975? 21 22 Yes, sir. A

J.S. COURT REPORTERS

Would that final check ride then have been shortly

Yes, sir. I believe it was given in June of 1975.

before you left Commuter?

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- June of 1975. Id so that if I understand you correctly,
 the fact that Mr. Bell gave you that check ride,
 rather than a direct representative of the Federal
 Aviation Agency, indicated to you that you were no
 longer acceptable as a check pilot?

 Well, that was apparent to me before then.

 Well, I am asking you: was that what indicated to you
- 9 A No. sir.

- Well, the reason I am asking you this, Mr. Briggs, is
 that you indicated it was allowed to lapse, and I am
 trying to find out about that lapse?
- 13 A I was never given any more pilots to check.

that you were no longer qualified?

- I see. Well, this Exhibit thirty-five that you identifie here, indicates that unless sooner recalled, this will be invalid if Mr. Briggs' employment with Broome County Aviation, Inc., and Commuter Airlines, terminates, is that right?
- 19 A Yes.
- 20 Q That is what it says. So that were you, then qualified
 21 to act under the designation down to August of 1975,
 22 when you left Commuter Airlines?
- 23 A No.
- 24 Q You were not. Was there any earlier revocation?
- 25 A Well, if you are talking about --

Q (Interrupting) I am talking about a revocation from
the same people who issued the authority, the Federal
Aviation Administration.

The F.A.A. never issued any revocation, no, sir.

So that this Exhibit thirty-seven, the one that you just looked at, is the only communication that you have had

from Federal Aviation Administration?

A Yes, sir.

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- 9 Would that be right. Now, with reference to that meeting
 10 of the captains, when Mr. Winston and Mr. Bell were
 11 present that you told us occurred on October 4th of
 12 1974, that was the meeting that you attended that was
 13 a meeting of the captains, correct?
- 14 A Yes, sir.
 - And had there been earlier that same day, a meeting of co-pilots? Did you ever know or hear about that?
- 17 A I don't remember.
 - Q You don't recall, all right. Now, you are living now in Florida, are you, Mr. Briggs?
- 20 A Yes, sir.
- 21 Q And have you been up here for several days before you were called to the witness stand?
- 23 A Yes, sir.
- During the time that you were here, did you ever hear

 the tape of the talk by Mr. Winston, and part, at least,

- of the talk by Mr. Bell at the co-pilots' meeting?
- 2 A No, sir.
- 3 Q You never heard that?
- 4 A No, sir.
- 5 Q Did you ever read what purported to be a transcript
- 6 of that tape?
- 7 A Yes, sir.
- 8 Q You did read that?
- 9 A Yes, sir.
- 10 Q All right. Now, let me ask you: were the comments that
- Mr. Winston as you remembered them to be on the tran-
- script, substantially the same as what was stated by
- him at the captains' meeting?
- A Yes, sir.
- 15 Q About the same things?
- 16 A Yes, sir.
- 17 Q Would that be right?
- 18 A Yes, sir.
- 19 Q Now, on that transcript, was what I think that we all
- agreed was a part of what Mr. Bell said?
- 21 A Yes, sir.
- 22 Q And did you read that portion of the transcript, as
- 23 well?
- 24 A Yes, sir.
- 25 Q And was what you found on that transcript substantially

what he said at the captains' meeting? 1 No, sir, I would have to say no. 2 A You would have to say no to that. Well, you did read 3 the transcript. Did he say any of the things that you 4 saw in the transcript, at the captains' meeting? 5 Yes, sir. A 6 And what there was in the transcript, did he say all of 7 0 those things at the captains' meeting? 8 I can't remember that. I just remember he spoke rather 9 A 10 strongly. He spoke what? Q 11 Rather strongly. 12 A All right. At the captains' meeting did he use the 13 term 'check ride'? 14 As I recall, yes. 15 A Was that term used? 16 As I recall, yes. 17 Now, Mr. Briggs, let me ask you, this meeting that we 0 18 are talking about that occurred back in October of 19 1974, some time back, what you have told us with 20 reference to us, is that strictly your best recollection 21 of that meeting, thinking back a year and half or something? 22 Yes, sir. 23 A And you had no occasion, or did you take any notes, or 24 Q anything of that nature? 25

No, sir. A 1 During the course of the meeting. So that you are Q 2 telling us. as best you can recall it, now, in the 3 month of June of 1976? 4 A Yes, sir. 5 Well. I don't know whether you answered Mr. Richards or 6 not with reference to uniforms, but you indicated that you were some two years before you got yours? 8 Yes, sir. 9 And were you flying mail service for a period of time? Q 10 Yes, sir. My first two years of employment were 11 primarily on the mail. But I did fly passengers 12 mostly on the weekends, and when they needed me during 13 the week. 14 Well, now, the first couple of years that you were 15 there you were flying mail, primarily, did I get that 16 correctly? 17 Yes, sir. A 18 And in connection with flying mail, are you required 19 to wear your uniform? 20 No, sir. A 21 Now, with reference to what you described as the events Q 22

occasions? Do you recall?

that occurred when you talked to Mr. Winston privately,

or in his office, was Mr. Bell there on any of those

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- A Not that I recall. The only time that I ever met with

 Mr. Winston and Mr. Bell at the same time was on the

 day that I was terminated.
 - Q Let me ask you this, Mr. Briggs: that last check ride that you tell us you had, were you being tested? You said Mr. Bell gave you the ride?
- 7 A Yes, sir.

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- 8 Q And passed you of course, didn't he?
- 9 A Yes, sir.
- Just one question about this list of pilots that Mr.

 Chalenski read off to you. All of those names, and I

 frankly admit I am not too familiar with most of them,

 but all of those people whose names were read off, were

 they co-pilots, or pilots, or what?
- 15 A There were some co-pilots, mostly co-pilots and some captains.
- 17 Q Some were captains?
- 18 A Yes, sir.
- 19 Q And some were co-pilots?
- 20 A Yes, sir.

- 21 Q And were any of the people on the list of names that
 22 he read off to you, did any of them hold any other
 23 positions with the company?
- 24 A Not that I recall.
 - Q I see. So that you would say in a general way that

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1		all of those names that were read off were either pilots
2		or co-pilots?
3	A	Well, the ones
4	Q	(Interrupting) Captains or co-pilots, I should say.
5	A	You read two or three names that I had no recollection
6		of whatsoever.
7	Q	They weren't familiar names to you at all?
8	А	No, sir.
9	Q	I see. Well, now, in connection with your characteri-
10		zation as to whether they quit or whether they were
11		fired, and so on, is that as a result of checking any
12		records anywhere, or is this just your general recollect:
13		on that?
14	A	That is my general recollection.
15	Q	Your general recollection?
16	A	Yes.
17		MR. SHANAHAN: May I have just a moment?
18		THE COURT: Certainly.
19	BY M	IR. SHANAHAN:
20	Q	Just one other thing, Mr. Briggs: with reference to
21		that list, again, of those names that were read off,
22		beginning from 1971 or for the period of 1971, down
23		through 1974, your answer, that is the answer that you
24		gave us to what your recollection was, was that
25		recollection based on some convenentions that you had

recollection based on some conversations that you had

1		with these various individuals named at or about the
2		time that their connection with the company terminated?
3	A	Either with them or other pilots.
4	Q	Either with them or who?
5	A	The other pilots.
6	Q	I see. So that what you are basing your answer on,
7		if I understand it, is your general understanding as
8		a result of talks among the employees?
9	A	Yes, sir.
10	Q	What I was wondering about is: did you ever check any
11		company records to ascertain this?
12	A	No, sir.
13	Q	That, precisely?
14	A	No, sir.
15		MR. SHANAHAN: Thank you.
16		THE COURT: Any re-direct?
17		RE-DIRECT EXAMINATION
18	BY N	MR. CHALENSKI:
19	Q	Are you a certified airplane mechanic?
20	A	Yes, sir.
21	Q	And certified power plant mechanic, also?
22	A	Yes, sir.
23	Q	As well as being a pilot?
24	A	Yes, sir.
25	Q	Is there a way that the door handle, attaching the

1 snubber to the frame of the plane, can become damaged 2 in the course of opening the door? Is there a way that -- repeat that, please? 3 Is there a way that the handle securing the snubber 4 on the frame of the plane can become damaged during the 5 course of opening the door? This is with reference to 6 7 the Metro, particularly. In opening the door? I would have to say no. 8 If the snubber failed, is there a way that that handle 9 can become damaged? 10 Well, if the chain was over the handle, possibly, yes. 11 This handle is not very strong, or the material that 12 13 it is hooked to is not very strong, put it that way. 14 And the chain would catch on the handle somehow? 15 Yes, sir. And damage it, and this would only be if the door free-16 fell because it would only be in that circumstance that 17 the chain would exert any strong force? 18 Yes, sir. 19 How long have you been a pilot, Mr. Briggs? 21 It will nineteen years this summer. 22 And in your experience as a pilot, how many times had 23 you heard of a snubber failing? 24 A Three times. 25 The three times that you had mentioned already? Q

1	Q	And one time with you, and one time with Mr. Sholl,
9		and one time with Mr. Leonard?
3	A	Yes, sir.
4	Q	Now, with reference to the discussion of ways to cost
5		the company money, quite a few ways were mentioned.
6		The going by the book, for example, and do you recall
7		when that was mentioned?
8	A	I do not recall the meeting or the exact date, but it
9		was at one of the meetings that we had during the fall
10		of 1974.
11	Q	Do you member anything that was mentioned in conjuction
12		with that, that might help you recollect the date of
13		that?
14	A	Well, one or two of those meetings were held after
15		somebody got fired, and the pilots were a little upset
16		to put it mildly.
17	Q	Do you recall the persons who were fired?
18	A	Well, Ronnie Williams comes to mind.
19	Q	He is one of the persons that was being discussed at
20		these meetings, as one of the persons fired?
21	A	Yes, sir.
22		THE COURT: We will take a five minute
23		recess and get a little cool air in here.
24		(Whereupon, the Jury was excused.)
25		THE CLERK: Court stands in recess for

1 five minutes. 2 (After a short recess, the proceedings 3 were resumed before the Court and the Jury.) 4 BY MR. CHALENSKI: 5 Mr. Briggs, when we left, you were testifying concerning 6 the discussion of going by the book, and that you recalled 7 hearing, you believe, this after Mr. Williams was fired. 8 Do you recall any other statements that were made 9 concerning costing the company money such as the runways 10 and the richer mixture, and do you recall when you heard 11 those? 12 I don't remember anything about the inactive runways or 13 rich mixture. There were some things said strictly 14 in jest, which I can't remember. But that is all it 15 was, jest. The only thing seriously discussed was going 16 by the book. 17 And was it your recollection that that was after Ronnie 18 Williams was fired? 19 Yes, sir. 20 What was the ultimate result of these discussions? Q 21 Nothing. Did anything like that ever take place? Q 23 No. sir. 24 Mr. Briggs, you testified on cross examination that Q 25 testing a pilot, with you as a check pilot, is a matter

1	of discretion. During the course of your checking a
2	pilot, any pilot and going strictly by the book, do
3	you believe that using your discretion properly you
4	could have failed any pilot that you ever checked?
5	A Going strictly by the book, yes, sir.
6	Q You could have failed any pilot?
7	A Yes, sir.
8	Q Did you, in fact, ever fail any pilot?
9	A I failed one, but it was kept informal. I told him
10	we were going to have to ride again at a later time.
11	Q Which pilot was that?
12	A John Herrington.
13	THE CLERK: Government's Exhibit thirty-
14	eight, marked for identification.
15	(Document marked Government's Exhibit
16	thirty-eight for identification.)
17	BY MR. CHALENSKI:
18	Q Mr. Briggs, when you are certified as a check ride
19	examiner, by the Federal Aviation Administration, when
20	you are certified, what is required to keep that current?
21	A A check every six months by the F.A.A.
22	Q And if that check is performed by somebody else, not
23	part of the F.A.A. are you then permitted to check or
24	to five check rides?
25	A No, sir.

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1	Q	I hand you Government's Exhibit thirty-eight for
2		identification, and have you ever seen that document
3		before (Offering)?
4	A	Yes, sir.
5	Q	And what is it?
6	A	It is a result of my six month check taken in December
7		of 1974, by Mr. Bell.
8	Q	Does that refresh your recollection as to whether the
9		Federal Aviation Agency or Administration gave you a
10		check ride during or about November or December of 1974?
11	A	It refreshes my memory, yes. They did not.
12	Q	So at about December of 1974 you were no longer able
13		to give check rides?
14	A	Yes, sir.
15		MR. CHALENSKI: Thank you, Mr. Briggs.
16		MR. SHANAHAN: May we see that?
17		MR. CHALENSKI: Yes (Offering).
18		RE-CROSS EXAMINATION
19	BY M	R. RICHARDS:
20	Q	Mr. Briggs, were you supporting the union during this
21		organizational activity?
22	A	Yes, sir.
23	Q	And you were attending meetings, several meetings?
24	A	Yes, sir.
25	Q	And you voted in favor of the union?

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1	A	Yes, sir.	
2	Q	Did you ever have occasion to speak with any of the	
3		pilots during this organizational activity that you would	
4		flunk them on their check rides if they didn't support	
5		the union?	
6	A	No, sir.	
7	Q	Did anyone from management ever speak to you about that?	
8	A	Not personally, no, sir.	
9	Q	Well, when you say, 'not personally', what do you mean?	
10	A	I am referring to the statement that Mr. Bell made at	
11		the captains' meeting in October.	
12	Q	And did anyone speak to you about threatening other	
13		pilots for bad check rides if they did not support the	
14		union?	
15	A	No, sir.	
16	Q	Do you know a pilot by the name of Hugh McDougald?	
17	A	Yes, sir.	
18	Q	Did you have occasion to speak with him regarding union	
19		activity?	
20	A	Probably. Not person to person.	
21	Q	And in the course of talking with him, did you ask	
22		for his support of the union?	
23	A	No, sir.	
24		MR. RICHARDS: I have no further questions	

BY MR. SHANAHAN:

- Mr. Briggs, with reference to this Exhibit thirty-eight
 which apparently is the result of your check ride, is
 that what this is?

 Yes, sir.
 - And I notice that this bears a date of December 17th, 1974. I think that you and I were talking about your having received such a check ride from Mr. Bell some time in 1975. Do you mean that this exhibit fefreshes your recollection that it did not occur in 1975?
 - A No, sir, the one that Mr. Bell gave me in 1975 would have been my next one that would have come due.
- This is perhaps a lack of understanding on my part,

 but this -- this exhibit that Mr. Chalenski showed to

 you, I suppose that this indicates the date of the

 check ride, which is here, December 17th of 1974?
 - A Yes, sir, it would.
- 17 Q Would that be right?
- 18 A Yes, sir.

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- And was that a check ride that was given to check your proficiency by Mr. Bell on or about December 12th, 1974?

 Do I understand correctly that that is what that is?
- 22 A Yes, sir. Mr. Bell has atrocious writing.
- 23 Q It is a little difficult to read. As far as the date
 24 is concerned, that is December 17th?
- 25 A That check right there would be the place of my check

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1 that was due in November of 1974. 2 0 I see. In actual practice your check comes during a certain 3 A month, and you are allowed a month of grace. If my 4 5 check came due in November, I was allowed up to 6 December 31st to have a check. 7 0 And was your check, in fact, due in November? 8 Yes, sir. It was due in November. So that this would have been 9 10 in satisafction of that requirement? 11 A Yes, sir. 12 0 Now, then, do I understand that you also received a 13 subsequent checking, also administered by Mr. Bell, at a later date? 14 Yes, sir, in June of 1975. My next check would have 15 16 been due in May of 1975, and he gave it to me in June. 17 So that Mr. Bell gave you two check rides then, one Q 18 in December, and one in June of 1975? 19 Yes, sir. A 20 0 And of course, passed you on both of them? 21 A Yes, sir. 22 And this particular exhibit deals with the December 23 check ride, would that be so?

Now, the other thing that I didn't quite understand in

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Yes, sir.

1		connection with your answers to Mr. Chalenski: in
2		giving a check ride did I understand you to say that
3		if you went by the book you would fail every pilot?
4	A	If you went strictly by the book there was not a pilot
5		walking around that could pass a check ride.
6	Q	There wouldn't be. Did you ever take that up with the
7		Federal Aviation Administration?
8	A	I am quite sure that they realize it.
9	Q	You are pretty sure that they realize it. Well, maybe
10		I should ask you this: do you consider that you would
11		have passed these two, if Mr. Bell, if he had gone by
12		the book?
13	· A	I am sure that Mr. Bell could have found something. He
14		could have had me on something, yes.
15	Q	And I take it that from what you are telling us now,
16		that if you were so advised that you could have found
17		something wrong with every pilot or co-pilot that you
18		gave a check ride to, right?
19	A	Yes, sir.
20	Q	Well, are you instructed not to go by the book, then,
21		by the Federal Aviation Agency?
22	A	What you are actually looking for on a six month check
23		is an unsatisfactory or unsafe practice. Going by the
24		book, you are supposed to hold within ten miles of
25		air speed, one hundred feet of altitude, and in an

	II .	
1		airline you are supposed to wear a correct shirt. So
2		you could find some little knit-picking thing if you
3		wanted to fail them, let's face it. Nobody is perfect.
4	Q	Well, I take it customarily then, as a check pilot
5		then, you don't look for any little knit-picking
6		thing?
7	А	I look for unsafe practices, which I am sure that Mr.
8		Bell does, also.
9	Q	Well, let me ask you: in connection with your experience,
10		has Bell, to you observation properly performed your
11		check rides?
12	A	Yes, sir.
13		MR. SHANAHAN: I think that that is all.
14		MR. CHALENSKI: I have no additional
15		questions, Your Honor.
16		MR. RICHARDS: No questions.
17		(Whereupon, the witness was excused.)
18		MR. CHALENSKI: The Government calls
19		John S. Levan.
20		JOHN S. LEVAN
21		Called as a Witness, being first duly sworn, was
22 /		examined and testified as follows:
23		THE CLERK: Government's Exhibits
24		thirty-nine and forty, marked for identification.
25		(Documents marked Government's Exhibits

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			-
1		thirty-nine and forty for identification.)	
2		DIRECT EXAMINATION	
3	BY	MR.CHALENSKI:	
4	Q	Mr. Levan, at my direction have you been reviewing cer-	
5		tain files provided by the Defendant pursuant to	
6		subpoena in this trial?	
7	A	Yes, sir, I have.	
8	Q	And what files of documents did you review?	
9	A	Personnel files, payroll files and pilots' files.	
10	Q	And have you prepared strike that. I hand you	
11		Government's Exhibit number thirty-nine for identification	n,
12		and is that an exhibit which you have prepared pursuant	
13		to your review of those files?	
14	A	Yes, sir, it is.	_
15	Q	And at my direction?	
16	A	Yes, sir.	
17	Q	And does Government's Exhibit thirty-nine show a	
18		listing of the employees terminated during the years	
19		1971, 1972, 1973 and 1974, up until October 2nd, 1974,	
20		by the Defendant?	
21	A	Yes, sir.	
22	Q	And does it also contain a record of the Defendant	
23		showing whether the employee was discharged, quit,	
24		laid off, or just no comments at all?	
25	A.	Yes, sir.	

1	Q	Mr. Levan, I am handing you Government's Exhibit forty
2		for identification, and is that a chart which you have
3		prepared at my direction, pursuant to your review of thos
4		files?
5		
	A	Yes, sir, it is.
6	Q	And does that chart set forth in the left hand column
7		the name of each captain and co-pilot who was employed
8		by the Defendant on October 2nd, 1974, and any other
9		pilots who were employed from that time on, until July
10		2nd, 1975?
11	A	Yes, sir, it does.
12	Q	And does the black horizontal bar or bars show some
13		dates of employment of any of those pilots, starting
14		in January 1, 1973?
15	A	Yes, sir.
16		MR. CHALENSKI: The Government offers
17		Exhibits thirty-nine and forty in evidence.
18		MR. RICHARDS: Your Honor, on Exhibit
19		number forty, we have no objection, but we can't
20		identify one person, Stephen McKeon.
21		THE COURT: Can you help them?
22	BY 1	MR. CHALENSKI:
23	Q	Mr. Levan, could you say where you obtained the name
24		of Stephen McKeon from?
25		I think it was from the payroll records.

- 1	
1	Q Is it possible that Mr. Keon was not a pilot, but another
2	employee, but that the payroll records from that time
3	appear that he was pilot to you?
4	A Yes, that is possible.
5	MR. CHALENSKI: If the Defense will
6	stipulate that Mr. McKeon is not a pilot, we will strike
7	his name off this chart.
8	MR. SHANAHAN: May I have a moment, with
9	reference to the others?
10	THE COURT: Certainly.
11	MR. SHANAHAN: Could I ask a few questions
12	preliminary, in connection with Exhibit thirty-nine
13	for identification?
14	THE COURT: Yes, sir.
15	VOIR DIRE EXAMINATION
16	BY MR. SHANAHAN:
17	Q Mr. Levan, with reference to Exhibit thirty-nine, first
18	of all, this exhibit apparently consists of about
19	four sheets that, as I understand it, you prepared,
20	correct?
21	A Yes, sir.
22	Q And that list are employees whose employment terminated
23	either by their being discharged, or quitting between
24	1971 and October what is the date there?
25	A Two.

- Q October 2 of 1974, would that be right?
- A Yes, sir, that is right.
- Now, first of all, you have complied this exhibit into the various pages contained in it according to years, and that is the first sheet is 1972, the second sheet is 1973, and the third sheet is 1974 -- well, I have them mixed up, but the final sheet in the year of 1974, from January 1st, 1974 to October 2nd, of 1974, right?
 - A Yes.

- And you prepared the sheets for these various years
 from certain records that were produced and subpoensed
 from Commuter Airlines and Broome Aviation?
- A Yes, sir.
- And now, I notice that as an illustration, and I am taking the first sheet with reference to the year of 1971 -- the first man listed was Robert Hill and opposite that name the payroll record shows discharged. The next name is John Houg, quit per the payroll record, then, the next name is Oscar and it looks like K-U-E-K-E-R, and no comment. And the name following that is Richard Knipe, and no comment. What does that 'no comment' mean?

 A That means that there was no comment made on the payroll
- record as to why that particular employee was terminated.

 Q So that it is impossible then to tell, from both the
- So that it is impossible then to tell, from both the payroll record and your exhibit, whether a person named

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or whose name is opposite the word 'no comment' whether 1 that person was discharged, or whether he quit, and 2 that is the significance of that, would that be right? 3 Yes, sir, that is right. Now, these people that are listed according to year, 5 it is not designated whether they are captains, or 6 co-pilots on your exhibit, is it? No, sir, it is not. 8 And the other exhibit is separated as to captains and 9 co-pilots, exhibit forty? 10 Yes, sir. 11 Well, is this exhibit to be taken or to be interpreted 12 along with the other exhibit forty, is that what we 13 are doing here with these two? 14 This particular exhibit here, thirty-nine, is a list 15 of all employees terminated in the years of 1971, 1972, 16 1.973, and up to 10/2/74. 17 What I am getting at is this: was this exhibit thirty-18 nine utilized in some manner in the preparation of 19 exhibit forty? 20 No, sir. 21 This has nothing to do with exhibit forty? 22 That is right. A 23 Oh, I see. All right. Well, let me ask you: are the 24 names of the people that are contained on exhibit thirty-25

nine also contained on exhibit forty? 1 A May I look at that? 2 Yes, sure (Offering). Q 3 No, sir, I don't think they are. A Q The people that are referred to in Exhibit forty, the 5 chart, are pilots and co-pilots, correct? 6 A Yes, sir. 7 And the people that are listed on exhibit thirty-nine 8 are they all, to the best of your knowledge pilots 9 and co-pilots? 10 No, sir, they are employees, and not necessarily pilots A 11 or co-pilots. In certain instances I could not tell. 12 Would they, for instance, include mechanics and people Q 13 of that classification? 14 Yes, it could be. A 15 Or office personnel possibly? Q 16 Yes, sir. A 17 Well, so that we understand it now: where the language Q 18 'no comment' is used, that designates that the payroll 19 records or the personnel records do not indicate 20 how this employee was terminated, and whether they 21 were fired, or whether they quit? 22 Yes, sir, that is correct. A 23 Now, we get to one here under the year of 1972 and Q 24 the name is Stephen Skiker, and opposite his name 25

in parentheses it says 'apparently rehired and terminated' and then outside of the parentheses it says 'quit-payroll record', and does that rehired and terminated indicate that it appeared that he was fired after having been rehired? I don't understand 5 THE PARTY Y-1. It seems as though they could be inconsistent. you explain that? Apparently in going through the records for 1971, Mr. 8 And the program of th Skiker was an employee of Commuter Airlines, and in 10 1972 he was rehired. He is listed under 1971? 12 No, he is not. Should he have been? 13 No, sir, because this is a list of employees terminated 14 and if he was carried over until 1972 apparently this 15 man here was -- he worked for the airlines and terminated 16 TO THE REPORT OF THE PARTY OF T or whatever it is, and was rehired, and terminated during 17 The second of th the year 1972, and the payroll record for 1972 was so 18 noted, with this particular comment, 'Quit.' 19 THE PARTY OF THE P 20 Now, under 1973 we have got a name Lance. . 21 Whitney, where it says in parentheses 'apparently rehired and terminated, ' and then 'no comment' so I suppose that that means that the payroll record doesn't indicate the state of the s 24 whether he was fired or he quit, would that be it? Yes, sir, that would be right.

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Q	So far as	s the ye	ar of	1973 18	concerned,		
					•	e	1
	names, th	nere are	five	of them	with a'no	comment'	,
					125		
	correct?						,
					,		,
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A Yes, sir.

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Well, didn't the payroll record indicate in what department these people were employed that are on this exhibit?

A No, sir, not to my knowledge.

Well, Your Honor, as far MR. SHANAHAN: as exhibit thirty-nine is concerned, I would like to object to that upon the ground that the evidence indire the second of the second of cates, number one, that it applies to all types of At least it is not broken down employees, concieveably. At least it is not br as to what they are, and that when various employees 'employment was terminated,' first, if a mechanic-were Control of the state of the sta terminated either by quitting, or by discharge in 1971, · 一、一节为公司和张安司下,为公司的政策。《第一次第二十字 or 1972, it would be completely, it seems to me, and the market of the and the art of the state of the sta immaterial, and outside of the issues of the indictment

MR. RICHARDS: We join in that

accordance with our agreement, and we will argue this point. Have a nice evening and don't talk about the case and don't let anybody talk about it with you.

Ten o'clock tomorrow morning.

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1	(Whereupon, the Jury was excused.)
2	THE COURT: All right, proceed.
3	(Whereupon, the following took place
4	before the Court in the absence of the Jury.)
5	MR. CHALENSKI: I used that same list
6	when I was addressing both Mr. Solberg and Mr. Briggs
7	as to their knowledge of whether the following pilots
8	or co-pilots were fired or quit. My notes show that
9	two of the names they did not know, and the rest, to
	their best recollection, these persons were pilots.
10	Admittedly, Mr. Levan did not have the best records
11	
12	available to tell him whether or not all of these
13	persons were pilots or not, going back to 1971. I will,
14	of course, be glad to work with the Defense Counsel if
15	they could determine whether persons were not pilets,
16	and strike them out.
17	THE COURT: Suppose they weren't, what
18	difference does it make?
19	MR. CHALENSKI: It wouldn't make too
20	much difference.
21	THE COURT: Does this show the reason
22	for the discharge? What is your purpose for offering
23	this exhibit?
24	MR. CHALENSKI: It shows whether the
25	employees quit or were fired, according to the
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payroll records of the company, or that they don't show anything. The purpose is to show that from 1971 up through 1974, when the first three employees were fired in this action, that the Defendant did not have a pattern of firing employees, but they had a large amount of quits. They made the statement in their opening argument that what happened here is just what happened in prior years.

THE COURT: All right, I see it.

MR. SHANAHAN: If I might say a word: I think that this chart, exhibit forty, that I think is now received, that seems to deal with the pilots and co-pilots, and as I understand it, this exhibit thirtynine, doesn't refer to the same individuals at all.

THE COURT: Well, I understood your point that it didn't. But I say, 'so what'?

MR. RICHARDS: Well, I don't know what it is because it does not seem material.

not to its admissibility, but perhaps to its weight, but surely it would be probative of the fact of whether this Defendant had a history of anti-union, or whether it did not, and that would bear, I suppose, on whether people had been discharged, or whether they had quit voluntarily, or whether more had been fired or quit,

1	and so on. I think that those are relative factors,
2	and that your argument, while perhaps a good one with
3	the Jury, is not much good with the Court.
4	MR. SHANAHAN: If I follow Your Honor
5	correctly, are you assuming that the people on that list
6	that these are areas covered by unions?
7	THE COURT: I don't know whether they
8	are or not.
9	MR. SHANAHAN: Well, the Jury is not
10	here, and I can tell you that they are not.
11	THE COURT: Even assuming that they are
12	not, if suddenly we catch a rash of firings, when there
13	hasn't been any rash of firings over a long history,
14	certainly that is probative of the circumstantial
15	evidence that these people were discharged because of
16	union activity. It is certainly showing something that
17	the Jury can consider.
18	MR. SHANAHAN: I imagine, Your Honor,
19	that the fault is mine in not quite understanding this.
20	With respect to the year 1974 there are six names listed
21	on the exhibit for that year?
22	THE COURT: Yes.
23	MR. SHANAHAN: OUt of the six, there are
24	half of them in that exhibit that show 'no comment' which
25	means that there was no indication whether the people

		_
1	quit, or were fired, and there were the other three	
2	names out of the total of six that says they quit.	
3	So in connection with Your Honor's statement about a	
4	sudden rash of firings in the year in question, it	
5	doesn't seem to bear that out.	
6		
7	THE COURT: I was not aware that that	
	was what the exhibit showed, and if that is so, then	
8	I don't see the probative value at all.	
9	MR. SHANAHAN: I request that you look	
10	at it because it was a little puzzlind as far as I was	
il	concerned.	
12	MR. CHALENSKI: I have oral testimony	
13	in the record as to each of those pilots. This lists	
14		
	those that show they were terminated.	
15	THE COURT: Then why do you need this?	
16	MR. SHANAHAN: I understood that	
17	THE COURT (T-4	
	THE COURT: (Interrupting) If you have	
18	testimony, why can't this witness use that testimony,	
19	instead of putting in the 'no comment'? Let the testimon	7
20	show that they were fired or quit, or whatever it was.	
21	MR. CHALENSKI: Okay. What I will do,	
22	then, is make up a new list showing the testimony of	
23	the witness' Solberg and Briggs.	
24		
25	THE COURT: Just make a list that you	
	can make. That is, based on the testimony and offened	1

That is, based on the testimony and offered

1 in the evidence. 2 If it based on records in evidence, or 3 testimony in evidence, anybody can make it. MR. CHALENSKI: I will modify that and 5 re-offer it. May I have permission to do that after 7 I rest, and I am prepared to rest at this time? 8 THE COURT: Yes, you may. 9 MR. CHALENS I: Thank you. 10 THE COURT: That will permit me to hear 11 whatever motions you have. 12 MR. SHANAHAN: If the Court please, then. 13 I would, on behalf of Mr. Bell, I would ask to dismiss 14 the first count of the indicitment, which is the only 15 count wherein Mr. Bell is charged with any crime. The 16 crime there, of course being charged is conspiracy, 17 and I would move for a dismissal of that count of the 18 indictment against him upon the ground that the people 19 have failed to, by law, to establish his guilt of the 12/44 106 - C- - 10 to 12 20 crime charged, and that there is not sufficient testimony 21 or evidence to warrant the submission of that count 22 to the Jury as far as he is concerned. 23 THE COURT: Denied. 24 MR. RICHARDS: I, at this time, on 25 behalf of the defendant Jerry Winston, Broome County

Aviation, Inc., and Commuter Airlines, Inc., we respectfully submit that all counts of the indictment should
be dismissed on the grounds that the Government has
failed to demonstrate that there is sufficient facts
to go to the Jury.

In addition, Your Honor, I would like

In addition, Your Honor, I would like to urge that counts four through nine, in the alternative be dismissed on the grounds that these counts are dependant upon a violation of subdivision three of the Railway Labor Act, which is interferring with the designation of a representative, and that those employees listed on counts four through nine were actually discharged after the representative had been certified, and under those circumstances could in no way have their discharge interfered with the selection of the representative.

THE COURT: Denied.

MR. CHALENSKI: Thank you, Your Honor.

THE COURT: I will give you back Exhibit

thirty-nine.

I would like to say that this case raises a myriad of legal problems which the United States attorneys' office hasn't even seen, much less been of any help to the Court.

MR. CHALENSKI: We will be pleased to

1	submit any supplemental memorandum of law.
2	THE COURT: It is kind of late for that.
3	THE CLERK: Court stands in recess until
4	ten o'clock tomorrow morning.
5	(Whereupon, the proceedings were recessed
6	at 3:55 p.m. until ten o'clock the following morning.)
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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Docket No. 76-1436

:

V.

JERRY WINSTON, BROOME COUNTY AVIATION, INC., COMMUTER AIRLINES INC., and THEODORE (TED) BELL,

CERTIFICATE OF SERVICE

Defendants-Appellants. :

STATE OF NEW YORK)

COUNTY OF NEW YORK)

MARVIN WEXLER, being sworn, states:

I am an attorney associated with PAUL, WEISS, RIFKIND, WHARTON & GARRISON, attorneys for appellants herein. On March 24, 1977 a clerk employed by my firm personally served two copies of the attached Brief of the Defendants-Appellants, containing revised record references in accordance with Rules 30(c) and 31(b) of the Federal Rules of Appellate Procedure and in accordance with a Stipulation concerning the submission of a deferred Appendix, and also served two copies of the deferred Appendix (one copy of the exhibit volume) on Paul V. French, Esq., United States Attorney for the Northern

District of New York, Office of the United States Attorney for the Northern District of New York, United States Court House and Federal Building, 100 South Clinton Street, Syracuse, New York 13202.

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MARVIN WEXLER

Sworn to before me this 24th day of March, 1977.

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ANTOINETTE SCAFFIDI
Notary Public. State of New York
No. 41-8773200 Queens County
Corthicals High in Flow York County
Contribution Empired Higher 20, 1970

